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HUMAN RIGHTS AND DISABILITY

Final report prepared by Mr. Leandro Despouy, Special Rapporteur

CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 23	1
A.	Origins of the study	8 - 9	2
B.	Background	10 - 14	2
C.	Mandate of the Special Rapporteur	15 - 19	3
D.	Sources and information received	20 - 22	4
E.	Plan of work	23	5
I.	BASIC LEGAL CONCEPTS	24 - 85	6
A.	Addressing the question	24 - 26	6
B.	International human rights standards	27 - 44	6
C.	Other conventions of universal scope	45 - 53	10
D.	Regional instruments	54 - 60	12
E.	Standards of international humanitarian law	61 - 64	13
F.	Non-conventional provisions	65 - 82	14
G.	Summary and assessment	83 - 85	18
H.	Terminology, definition and statistics	86 - 108	19
II.	FACTORS CAUSING DISABILITY	109 - 180	26
A.	Multiple causes	109 - 118	26
B.	Violations of human rights and of humanitarian law as factors causing disability	119 - 126	28
C.	Suffering inflicted on non-combatants in situations of armed conflict or civil strife	127 - 129	30
D.	Insufficient care and cruelty towards children and women	130 - 145	31
E.	Specific problems of some other vulnerable groups	146 - 157	35
F.	Underdevelopment and its various manifestations considered as a violation of human rights	158 - 169	37
G.	Apartheid	170 - 173	41
H.	Problems related to some deliberately inflicted forms of punishment and other treatment	174 - 178	42
I.	Scientific experiments	179 - 180	43

CONTENTS (continued)

		Paragraphs	Page
III.	PREJUDICES AND DISCRIMINATION AGAINST DISABLED PERSONS: AREAS, FORM AND SCOPE	181 - 203	44
	A. Introduction	181 - 183	44
	B. Areas and scope of discrimination	184	45
	C. Cultural barriers	185 - 192	45
	D. Particularly vulnerable situation of the mentally ill	193 - 194	47
	E. Institutionalization	195 - 199	48
	F. Elimination of abuses and of acts of discrimination	200 - 203	50
IV.	NATIONAL AND INTERNATIONAL POLICIES AND MEASURES DESIGNED TO ERADICATE DISCRIMINATORY PRACTICES AND GUARANTEE THE DISABLED THE FULL ENJOYMENT OF HUMAN RIGHTS	204 - 263	52
	A. Preliminary considerations	204 - 206	52
	B. Committal to an institution or rehabilitation in the community	207 - 213	52
	C. Measures taken to limit committal to institutions and to prevent abuses	214 - 220	54
	D. Measures to facilitate the establishment and activities of associations of disabled persons	221 - 228	56
	E. Rights of disabled persons in respect of education, training and vocational guidance	229 - 239	59
	F. Rights of disabled persons in respect of employment and working conditions	240 - 245	62
	G. Other rights of disabled persons	246 - 254	64
	H. Measures to guarantee the exercise of the rights of disabled persons and the effectiveness of the remedies available to them	255 - 263	66
V.	PUBLIC INFORMATION AND EDUCATION	264 - 270	69
RECOMMENDATIONS AND PROPOSALS		271 - 284	71
	A. General recommendations	272 - 278	71
	B. Specific proposals	279 - 284	72

ANNEX

Replies received

INTRODUCTION

1. By way of introduction it might be useful to go back into the past and to mention the names of Franklin D. Roosevelt, Goya, Frida Kahlo, Mozart, Helen Keller and so many other famous men and women who in addition to their achievements have bequeathed us the living testimony of the fact that even those who had to cope with pain, adversity or particular physical or mental disabilities were also able to move humanity through their art, science and genius. To support this statement and to show that it is still valid today, it would suffice to mention the name of Stephen W. Hawking, the well-known author of the best-seller A Brief History of Time*, who is regarded as one of the world's major theoretical physicists and who, despite having suffered from a progressive and incurable neuromuscular disease for more than 25 years, is currently active as a professor at the University of Cambridge, in the same chair held by Isaac Newton two centuries ago.

2. However, there is no doubt that the mere mention of historical or outstanding figures is not enough to understand fully the immense problems facing millions and millions of persons who, either permanently or for a prolonged period, suffer from some type of disability. In fact, the above references, in addition to being of some illustrative value, are designed to explain our intention of departing from the classic approach to disability - which traditionally confines it strictly to the persons affected and does not regard it as something which concerns us all - and of treating it as a problem that involves the community as a whole.

3. More than 500 million persons 1/ - 10 per cent of the world's total population - suffer from some type of disability. In the majority of countries, at least 1 out of 10 persons has a physical, mental or sensory impairment, and at least 25 per cent of the entire population are adversely affected by the presence of disabilities. These figures show with considerable eloquence the enormous size of the problem and, in addition to its universal scope, highlight the well-known impact of this phenomenon on any society as a whole. However, this quantification alone is not a sufficient basis for evaluating the actual gravity of the problem, since these persons frequently live in deplorable conditions, owing to the presence of physical and social barriers which prevent their integration and full participation in the community. As a result, millions of children and adults throughout the world are segregated and deprived of virtually all their rights, and lead a wretched, marginal life.

4. Therefore, we do not consider it too bold to begin this study by immediately stressing the social question involved and the inherent problem of human rights.

5. As a preliminary warning, it should be pointed out that to deal correctly with this topic it is essential to rid ourselves of any feelings of pity or commiseration. We are not dealing with a strictly humanitarian problem, still

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* Bantam Books, 1988.

less with a situation requiring our charity. Far from that, the treatment given to disabled persons defines the innermost characteristics of a society and highlights the cultural values that sustain it.

6. It might appear elementary to point out that persons with disabilities are human beings - as human as, and usually even more human than, the rest. The daily effort to overcome impediments and the discriminatory treatment they regularly receive usually provides them with special personality features, the most obvious and common of which are integrity, perseverance, and a deep spirit of comprehension and patience in the face of a lack of understanding and intolerance. However, this last feature should not lead us to overlook the fact that as subjects of law they enjoy all the legal attributes inherent in human beings and hold specific rights in addition.

7. In a word, persons with disabilities, as persons like ourselves, have the right to live with us and as we do. From the legal point of view, there are three dimensions to this statement: (a) the recognition that persons with disabilities have specific rights; (b) respect for these and all their rights; and (c) the obligation to do what is necessary to enable persons with disabilities to enjoy the effective exercise of all their human rights on an equal footing with others.

A. Origins of the study

8. On 12 March 1984, the Commission on Human Rights adopted resolution 1984/31 recommending to the Economic and Social Council that it request the Sub-Commission to appoint a Special Rapporteur to undertake a thorough study, in consultation with the Centre for Social Development and Humanitarian Affairs, of the causal connection between serious violations of human rights and fundamental freedoms and disability as well as that of the progress made to alleviate problems, and to submit its views and recommendations, through the Commission on Human Rights and the Commission on Social Development, to the Economic and Social Council. The Council endorsed the Commission's request by its resolution 1984/26 of 24 May 1984.

9. On 29 August 1984, in response to a request by the Economic and Social Council and the Commission on Human Rights, the Sub-Commission adopted resolution 1984/20 in which it decided to appoint Mr. Leandro Despouy as Special Rapporteur to conduct a comprehensive study on the relationship between human rights and disability.

B. Background

10. Recently, beginning in the late 1970s, the international community, pressed by the enormous suffering caused by widespread hunger, ecological disasters, wars, etc., became increasingly aware of the problems afflicting persons with disabilities. The beginning of the new multilateral concern with disability can be seen as the adoption by the General Assembly of the Declaration on the Rights of Disabled Persons, on 9 December 1975, following the Declaration on the Rights of Mentally Retarded Persons, adopted on 20 December 1971. 2/

11. As will be recalled, on 16 December 1976 the General Assembly proclaimed 1981 as the International Year of Disabled Persons, 3/ later known under the theme "full participation and equality", and there was established a United Nations Trust Fund to finance those activities whose purpose was, in particular, to draw the attention of the international community to the situation and the needs of persons with disabilities. The main result of the actions undertaken before and during the celebration of that year was the elaboration of the "World Programme of Action concerning Disabled Persons", 4/ which the General Assembly adopted by consensus through its resolution 37/52 of 3 December 1982. The Programme sets the guidelines for a world strategy to promote the adoption of effective measures for prevention of disability, rehabilitation and the achievement of "equality" and "full participation" of disabled persons in social life and development.

12. It is important to mention that the World Programme of Action explicitly recognizes the right of every human being to equal opportunity, which in fact means a broadening of the concept of human rights. This explains why, the year following the adoption of the plan, the General Assembly, through its resolution 37/53, entitled "Implementation of the World Programme of Action concerning Disabled Persons", stipulated that United Nations human rights bodies should take into account the unfavourable conditions in which most disabled persons are living and urged those bodies to adopt measures to correct the situation.

13. However, the point of departure of the work of the relevant United Nations human rights bodies is essentially Sub-Commission resolution 1982/1, in which the Sub-Commission recommended that Governments give consideration to difficulties encountered by disabled persons in the enjoyment of universally-proclaimed human rights as well as to the need to strengthen procedures for them to bring allegations of violations of their human rights to a competent body vested with the authority to act on such complaints or to the attention of the Government.

14. One year before the appointment of the Special Rapporteur, the Sub-Commission, at its thirty-sixth session, explicitly highlighted, in resolution 1983/15, the relationship between human rights and disability, in particular between human rights violations and disability.

C. Mandate of the Special Rapporteur

15. As mentioned earlier, the original mandate of the Special Rapporteur derived from Commission on Human Rights resolution 1984/31, Economic and Social Council resolution 1984/26 and Sub-Commission resolution 1984/20. These resolutions call for a thorough study to be undertaken of the causal connection between serious violations of human rights and fundamental freedoms and disability, focusing on recommendations and/or progress achieved in remedying that situation. The mandate also includes a request to make an in-depth analysis of all forms of discrimination against disabled persons, as well as the existing or possible relationship between the system of apartheid and disability.

16. Guided by the principles of equality of opportunity, full participation and an independent living for disabled persons, the Sub-Commission requested the Special Rapporteur to examine closely the treatment afforded to disabled persons by public and private institutions, and any cases of institutional abuse, and to examine the situation of economic, social and cultural rights in relation to disability. Lastly, the Sub-Commission's resolution requested the inclusion in the study of a preliminary outline on the subject of scientific experimentation as it relates to disability.

17. The Special Rapporteur's mandate was subsequently extended and refined thanks to guidance and input from members of the Sub-Commission, observer Governments, non-governmental organizations, etc., during the discussions which took place at the thirty-eighth and fortieth sessions of the Sub-Commission in 1985 and 1988 respectively, which provided an opportunity for examination of the Special Rapporteur's preliminary report (E/CN.4/Sub.2/1985/32) and his progress report (E/CN.4/Sub.2/1988/11). Particularly noteworthy, in this connection, were observations on the need for in-depth study of the various types of conflict, wars and other forms of violence as causal factors of disability; the relationship between the latter and peace; the repudiation of penalties or punishments, such as amputation, deliberately designed to cause disability; and the desirability of providing an adequate legal definition and more precise statistical data on the number of disabled persons.

18. The discussions which were held brought out clearly the desirability of including in the study the particularly complex and serious problems which arise in regard to disability in particular groups, such as women, 5/ indigenous populations, 6/ immigrant workers and refugees, 7/ and also the acute problems experienced by disabled persons in the developing countries. This report also reflects the concern expressed by various participants in regard to the relationship between extreme poverty, underdevelopment 8/ and social inequalities and the emergence and intensification of disabilities and also the enjoyment of human rights by disabled persons.

19. Finally, it is to be noted that last year the Sub-Commission adopted a decision - 1990/113 - to include as a matter of top priority in the provisional agenda for the forty-third session in August 1991, consideration of the Special Rapporteur's final report.

D. Sources and information received

20. In compliance with the mandate conferred on him by the preceding resolutions, the Special Rapporteur has, since 1984, circulated requests, based initially on a provisional list of questions and subsequently on a questionnaire, for information and suggestions from Governments, various United Nations bodies, in particular the Centre for Social Development and Humanitarian Affairs in Vienna, the specialized agencies, regional organizations and non-governmental organizations concerned, in particular organizations for the disabled. The large number of responses received supplement the information received by the United Nations prior to the appointment of the Special Rapporteur, as published in documents E/CN.4/Sub.2/1983/36 and Add.1-4 and E/CN.4/Sub.2/1984/9 and Add.1. The Special Rapporteur has also followed closely intergovernmental activities, national policies and activities of non-governmental organizations aimed at

ensuring the prevention of disability and greater integration and participation by disabled persons. Close contact has been maintained in particular - directly or through the Centre for Human Rights - with activities undertaken under the aegis of the Centre for Social Development and Humanitarian Affairs in implementation of the World Programme of Action concerning Disabled Persons.

21. The main sources used in compiling this report have basically been the relevant international instruments, in particular those of universal scope, and the replies sent by Governments and intergovernmental and non-governmental organizations to the questionnaire and to the numerous additional requests made of them. Account has also been taken of documents prepared by experts on disability and meetings of experts held mainly under the auspices of the United Nations. For purely methodological reasons it has been found preferable to group together in an annex all the replies received and the extensive reference material.

22. Lastly, the Special Rapporteur would like to express his appreciation to the members of the Sub-Commission for the information provided, and in particular for their suggestions and valuable advice on both technical and substantive matters. He would also like to emphasize the contribution made by delegations from observer Governments, various United Nations bodies, in particular the Centre for Social Development and Humanitarian Affairs, specialized agencies such as ILO and WHO, and in particular the assistance received from non-governmental organizations headed by disabled persons, without whose decisive support this report could never have been written and to whom it is only right that it should be dedicated.

E. Plan of work

23. In the light of the foregoing, the present study has been broken down into five chapters and has been prepared in accordance with the plan of work contained in the progress report of 1988 which, it will be recalled, was discussed by the Sub-Commission at its fortieth session. Chapter I deals in particular with legal issues regarding disabled persons and the formulation of an adequate definition of disability. Chapter II discusses factors causing disability, with particular reference to violations of human rights and humanitarian law as such factors. Chapter III describes the prejudices, discrimination and other violations of human rights to which disabled persons are subjected. Chapter IV sets out the national and international policies and measures designed to eradicate discriminatory practices and guarantee the disabled the full enjoyment of human rights. Chapter V is concerned with public information and education. Lastly, attention is drawn to the conclusions and recommendations of the Special Rapporteur based on the study.

I. BASIC LEGAL CONCEPTS

A. Addressing the question

24. This chapter will comprise a preliminary discussion of a number of basic issues, which relate to the main subject of this paper. Thus, for example, an attempt is made to answer the following questions: Do disabled persons enjoy the same rights as others? Do they have specific rights? If they do have such rights, where are those rights established? Are they to be found mostly in declaratory provisions which afford no legal protection? In the case of certain legally "identifiable" groups, such as disabled persons, is mere recognition of equality before the law enough or should some other requirements be added to allow the disabled to exercise their full range of recognized human rights effectively and on an equal basis? Finally, is the right to equal opportunity really that, or just an aspiration?

25. Bearing in mind that this is a study of universal scope, we must concentrate mainly on examining the various relevant international instruments. Of these, we will review both those which set forth broad guidelines (for example, declarations) and those which contain binding and generally applicable standards for all individuals (such as the International Covenants). Naturally we will also include a discussion of those instruments which lay down specific standards regarding disability or which refer to particular categories of disabled persons (such as the Convention on the Rights of the Child).

26. Lastly, it is important to stress that some of the provisions of those instruments are preventive while others are compensatory, although in every instance the common denominator is the protective function. In addition, some standards are designed to attack the factors which cause disability, whereas others seek to protect persons who already suffer from some form of disability. In still other cases, both objectives are combined. Only by reading the entire body of these provisions - and using the rules which are characteristic of human rights as the criterion for interpreting them - will we be able to grasp fully the core concepts of the subject and its true legal dimension.

B. International human rights standards*

27. In accordance with the purposes and principles of the Charter of the United Nations and the International Bill of Human Rights, not only are persons suffering from any form of disability entitled to exercise all the civil, political, economic, social and cultural rights embodied in these and other instruments, but they are recognized as being entitled to exercise them on an equal basis with other persons.

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* See note 2/.

28. These two statements are founded both on general provisions, such as Articles 55 and 56 of the Charter of the United Nations - which refer to the fact that all Member States have undertaken to promote "higher standards of living, full employment, and conditions of economic and social progress and development" - and on specific provisions, such as article 25 of the Universal Declaration of Human Rights, which recognizes that everyone has "the right to a standard of living adequate for the health and well-being of himself and of his family" as well as "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (author's underlining).

29. Regarding the principle of equal rights, the imperative form of each article of the Universal Declaration is highly instructive. Article 1 stipulates that "All human beings are born free and equal in dignity and rights ...". Article 2 states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion ...". Articles 3 and 6 in turn use the expression "Everyone has the right to ...". Article 7 states that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination ... and against any incitement to such discrimination".

30. Although only one of the provisions of the Universal Declaration that has been quoted refers specifically to disability, this instrument has been and is of vital importance in promoting and protecting the human rights of the disabled, because these persons have the same dignity and the same rights as all other human beings. Furthermore, the Declaration has served as the basis and the point of reference for many other subsequent instruments and resolutions adopted on the subject.

31. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights came into force in 1976. Together they form the most comprehensive international code of binding legal provisions in the area of human rights. The two Covenants develop and supplement the provisions of the Universal Declaration, and the three instruments together make up what has come to be known as the International Bill of Human Rights. Disability is perhaps the area in which the importance of recognizing the indivisibility and interdependence of human rights and fundamental freedoms, as both Covenants do, is most evident and sharp. This means recognizing the urgent need to give equal attention and consideration to the application, promotion and protection of civil and political rights, on the one hand, and economic, social and cultural rights on the other.

(a) International Covenant on Economic, Social and Cultural Rights

32. Beginning with its preamble, of this Covenant refers to the need to create conditions "whereby everyone may enjoy" the full range of human rights. Article 1 establishes the right of self-determination and article 2 guarantees that the rights enunciated in the Covenant will be exercised by all without discrimination of any kind. Article 6 recognizes "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses and accepts". Thus, for example, if a disabled

person who is able to earn his living by working is in a position of inequality vis-à-vis others, this would represent a violation of that right.

33. Article 7 refers to the right of everyone to the enjoyment of just and favourable conditions of work which ensure adequate remuneration. The principle of "equal remuneration for work of equal value without distinction of any kind" is established. The unacceptable distinctions obviously extend to those applied to disabled persons, although such distinctions are commonly applied to the disabled, who are customarily paid less because of their condition, despite the fact that their disability does not prevent them from doing the same work as a non-disabled person.

34. Article 10 (2) states that "Special protection should be accorded to mothers during a reasonable period before and after childbirth". This matter is closely connected with the subject of disability because many cases of disability occur on account of pregnancy or childbirth difficulties.

35. Article 11 recognizes that everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. This study presents information which shows that, in the majority of cases, this right is very far from being respected where the disabled are concerned.

36. Article 12 recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This right is obviously violated when the necessary measures are not taken to prevent undernourishment or malnutrition, when proper medical care is not provided, when the disabled are not given rehabilitation services, when general living conditions are not conducive to mental health, when immunization campaigns to prevent certain diseases that cause perfectly avoidable disabilities are not carried out, when people live in squalid and overcrowded accommodation, etc.

37. Article 13 recognizes the right of everyone to education. In the case of disabled persons, this means both that they must have effective access to education in the communal schools and that special education should be provided for them where necessary.

38. Finally, article 15 recognizes the right of everyone to take part in cultural life. This right is violated, for example, when access is not possible to facilities in which cultural activities take place (cinemas, theatres, libraries, sports stadiums, museums, etc.), when no alternatives are provided to enable the disabled to participate, or when they are excluded on account of prejudices in respect of their ability to participate.

(b) International Covenant on Civil and Political Rights

39. This instrument ensures to all individuals without distinction of any kind, such as race, colour or sex, all the rights established therein, and its article 2 establishes that everyone shall have an effective remedy to put an end to any violation of those rights. This provision, as we shall see later, is of fundamental importance for the disabled, because Governments do not

always recognize the legal protection of their rights and almost never provide any special measures to assist the disabled in taking action against any violations of those rights.

40. The Covenant, which uses language similar to that of the Universal Declaration of Human Rights (art. 5) and to the actual title of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, establishes in its article 7 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". It further provides that "no one shall be subjected without his free consent to medical or scientific experimentation". It is common knowledge that both phenomena today are a major cause of various kinds of disability.

41. Article 9 refers to the whole area of criminal judicial proceedings, the right to defence and the right to be informed of the reasons for one's arrest. This article is of considerable importance as far as protection is concerned, especially for those persons who suffer any kind of mental disability, to prevent them from being subjected to arbitrary and unnecessary arrest or any other kind of institutional abuse.

42. In article 17, it is stated that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation". This article is directly linked to the situation of persons who are committed to institutions and whose most elementary rights are habitually infringed, as for example their right to privacy. Article 23 recognizes the right of men and women of marriageable age to marry and to found a family. Especially in the case of the mentally ill, this article is often violated all over the world, for apart from the fact that in a great many instances the persons have no real disability, their families or the authorities of the institution to which they are committed infringe the right, which everyone has, to marry and found a family. This right is also violated in cases of enforced sterilization.

43. Article 25 establishes the right of everyone to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and be elected at periodic elections by universal suffrage; and to have access, on general terms of equality, to public service in his country. This right is violated, for example, when a mentally disabled person is not allowed to exercise his right to vote, even though he is in a position to do so; or when the blind are denied the vote on the pretext that secrecy will not be maintained; or when the polling station is not accessible to persons with restricted movement; or when a candidate for a position in the public service is discriminated against and denied this opportunity on account of the prejudice that because he has a particular disability he is not qualified to hold that post.

44. Lastly, and as indicated at the beginning of this chapter, only by reading both instruments consecutively can one appreciate the interdependence between civil and political rights and economic, social and cultural rights, and above all, the importance of that interdependence in all matters relating

to persons with a disability. It can happen, and has in fact happened, that some Governments ensure optimum living standards for disabled persons but limit their exercise of certain political rights, such as the vote.

C. Other conventions of universal scope

45. In addition to those basic instruments, the International Convention on the Suppression and Punishment of the Crime of Apartheid provides in article II, that the term "the crime of apartheid" shall apply to "the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment".

46. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted in 1984, contains universally applicable standards which are of great importance for preventing disability. Under article 2, each State party undertakes to adopt effective leglislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Under no circumstances may an order from a superior officer, or exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency, be invoked as a justification for torture. Article 14 of the Convention goes beyond the purely preventive aspect and contains binding provisions for compensation whereby Governments ensure that the victim of an act of torture obtains redress and has a right to fair and adequate compensation, including the means for as full rehabilitation as possible.

47. The United Nations human rights bodies have paid particular attention to the need to prevent injury to children and to afford disabled children adequate protection. This attention was largely responsible for the inclusion of special provisions in the Convention on the Rights of the Child. Thus, for example, article 19 of the Convention provides for the protection of the child from all forms of physical or mental violence, injury or abuse, including sexual abuse.

48. Its article 23 provides that:

> "1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
>
> 2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
>
> 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and

> shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
>
> 4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

49. Some provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families may be regarded as relevant to the protection of this group of persons from disability. In particular, article 16 (2) provides that migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. Under article 28 of the Convention, migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned.

50. Since its establishment over 70 years ago, the International Labour Organisation (ILO) has never ceased to advocate that disabled persons, whatever the cause or nature of their disability, should be afforded every opportunity for vocational rehabilitation, including vocational guidance, training or readaptation as well as opportunities for employment, whether open or under sheltered conditions.

51. ILO Recommendation No. 99 of 1955 concerning Vocational Rehabilitation of the Disabled was a landmark in the promotion of the right of the disabled to participate fully in opportunities for training and employment. Moreover, the fact that many countries the world over have based their vocational rehabilitation laws and practices on this recommendation proves what a wide impact this ILO instrument has had. The same recommendation gave impetus to the ILO's technical cooperation activities in this field.

52. On 20 June 1983, the plenary International Labour Conference adopted a Convention (No. 159) and a Recommendation (No. 168) concerning vocational rehabilitation of the disabled. Both instruments made an appeal for renewed efforts to ensure that disabled persons are ensured equal access to training and employment. They also emphasized the important role of employers' and workers' organizations and of the community itself in attaining this goal. The direct intervention of these organizations should be of considerable influence in ending the discriminatory practices which unfortunately still

hamper the access of disabled workers to the labour market. The Convention and the Recommendation also stress the need to pay greater attention to the training and employment of disabled persons in rural areas, outline new criteria for creating jobs and, perhaps most importantly, point out the need to consult disabled persons themselves in planning and formulating policies and programmes that will affect their integration or reintegration into active working life.

53. As was mentioned before, these ILO standards opened up for the organization, its member States and all those involved in the vocational rehabilitation of disabled persons, a wide area where practical steps could be taken within the framework of the United Nations Decade of Disabled Persons. At the same time, the implementation of these provisions will be of great assistance in helping disabled persons to enjoy their human rights, especially those related to their social and economic welfare.

D. Regional instruments

54. Three regional intergovernmental organizations - the Council of Europe, the Organization of African Unity and the Organization of American States - have adopted international instruments concerning human rights, including the human rights of the disabled.

55. On 4 November 1950, under the auspices of the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in Rome. This Convention incorporates many of the rights set forth in the Universal Declaration of Human Rights and includes the prohibition of torture and cruel, inhuman or degrading treatment or punishment, stipulated in its article 3.

56. Particular reference was made to the rights of disabled persons in the European Social Charter, adopted in Turin on 18 October 1961, article 15 of which is entitled: "The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement".

57. On 24 July 1986 the Council of the European Communities adopted a Recommendation on the employment of disabled people in the European Community. 9/ The Recommendation is based on the principle that disabled people have the right to equal opportunity in training and employment. The Council of the European Communities, the Commission and the Committee of Ministers have adopted various resolutions on an appropriate policy for the rehabilitation of disabled persons, in which member States are called on to step up preventive measures to eliminate impairments, disabilities and handicaps, implement a comprehensive and coordinated policy of rehabilitation, and encourage the full participation of disabled persons in their rehabilitation and in the life of the community.

58. The African Charter on Human and Peoples' Rights, adopted in 1981 in Nairobi, stipulates in article 18.4: "The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

59. The American Convention on Human Rights does not explicitly address the subject of disability, referring to it implicitly as do the European Convention, the International Covenant on Civil and Political Rights, etc. However, two articles of the American Declaration of the Rights and Duties of Man, adopted in Bogotá in 1948, are clearly relevant. Article XI states that: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources". In addition, article XVI proclaims the right of every person to enjoy the protection of the State from the consequences of "unemployment, old age, and any disabilities arising from causes beyond his control that make it physically and mentally impossible for him to earn a living" (author's underlining).

60. On 14 November 1988 the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights was adopted. In article 18 the Protocol states that disabled persons have the right to special protection. It declares that they have the right to appropriate work programmes, special training for their families, social groups and the consideration of the requirements of disabled persons in urban development plans.

E. Standards of international humanitarian law

61. As examples of standards of international humanitarian law, whose violation often results in or aggravates disability or has particular consequences for disabled persons, it would be appropriate to mention the Third and Fourth Geneva Conventions of 1949, relative to the Treatment of Prisoners of War and the Protection of Civilian Persons in Time of War, respectively. 10/ Furthermore, article 3, which is common to the four Geneva Conventions and governs armed conflict not of an international character, prohibits at any time and in any place whatsoever violence to life and person, mutilation, cruel treatment, etc.

62. Part II of Protocol I, additional to the Geneva Conventions of 1949, in articles 8 to 34, contains provisions intended to ameliorate the condition of the wounded, sick and shipwrecked in time of international armed conflict. Article 35 prohibits the employment of methods and material of warfare of a nature to cause superfluous injury, unnecessary suffering, or widespread, long-term and severe damage to the natural environment. In accordance with article 44, any combatant who falls into the power of an adverse Party shall be a prisoner of war; article 45 provides measures for the protection of prisoners of war.

63. Part IV (articles 48-79) provides for the protection of civilian populations who fall into the power of an adverse Party. Articles 48-71 are additional to the provisions of the Fourth Geneva Convention concerning the protection of the civilian population and civilian objects against the dangers of military operations, and set out a series of norms to achieve this. The main one of these (art. 48) is to ensure that the Parties to a conflict shall at all times distinguish between the civilian population and combatants and shall direct their operations only against military objectives. Methods of warfare such as the starvation of civilians and attacks on the natural

environment are specifically prohibited. Articles 72-79 deal with the treatment of persons in the power of a party to the conflict. Articles 76-78 are measures designed to protect women and children, in particular against rape, forced prostitution and any other form of indecent assault. Article 79 states that journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be protected under the Conventions and the Protocol.

64. Protocol II relates to armed conflicts not of an international character, including conflicts between the armed forces of a government and dissident armed forces or other organized armed groups which exercise control over a part of its territory. Article 4 ensures that all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, shall be treated humanely, without any adverse distinction. It includes a list of acts which shall remain prohibited at any time and in any place whatsoever, in particular murder, torture, mutilation and corporal punishment. Article 5 lays down minimum provisions with regard to persons deprived of their liberty for reasons related to armed conflict and norms for the protection of persons prosecuted and punished for criminal offences related to the armed conflict.

F. Non-conventional provisions

65. Over more than 20 years, the General Assembly, Economic and Social Council and other bodies concerned with human rights have adopted various declarations and resolutions aimed directly or indirectly at promoting and protecting the human rights of disabled persons.

66. The Declaration on Social Progress and Development, adopted by the General Assembly by resolution 2542 (XXIV) of 11 December 1969, states in article 10 that social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the Declaration's main goals. These goals include the assurance of a steady improvement in levels of living, the achievement of the highest standards of health and the provision of health protection for the entire population, if possible free of charge. In article 11, section (c) of the Declaration, the goal of the protection of the rights and the assuring of the welfare of the disabled and protection for the physically or mentally disadvantaged is included.

67. In resolution 2856 (XXVI) of 20 December 1971, the General Assembly proclaimed the Declaration on the Rights of Mentally Retarded Persons and called for national and international action to ensure that it would be used as a common basis and frame of reference for the rights contained in it. According to the Declaration, the mentally retarded person should enjoy the same rights as other human beings, including the right to proper medical care, economic security, the right to training and rehabilitation, and the right to live with his own family or with foster parents. Furthermore, the Assembly declared that there should be proper legal safeguards to protect the mentally retarded person against every form of abuse if it should become necessary to restrict or deny his or her rights.

68. The relevant bodies of the United Nations are currently considering the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, which are intended to serve, inter alia, as a guide to Governments, specialized agencies, national, regional and international organizations, competent non-governmental organizations and individuals and to stimulate a constant endeavour to overcome economic and other practical difficulties in the way of their adoption and application, since they represent minimum United Nations standards for the protection of fundamental freedoms and human and legal rights of persons with mental illness.

69. In resolution 3318 (XXIX) of 14 December 1974 the General Assembly adopted and proclaimed the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, and called for the strict observance of the Declaration by all Member States. In article 1 the Declaration states that attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited and condemned. Article 2 condemns the use of chemical and bacteriological weapons in the course of military operations as this constitutes one of the most flagrant violations of the Geneva Protocol of 1925, 11/ the Geneva Conventions of 1949 and the principles of international humanitarian law.

70. The Declaration also states that "All efforts shall be made by States involved in armed conflicts ... to spare women and children from the ravages of war", and that "All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children".

71. In 1975 the General Assembly adopted the Declaration on the Rights of Disabled Persons, which proclaimed that disabled persons have the same civil and political rights as other human beings. The Declaration states that disabled persons should receive equal treatment and services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

72. As they are particularly relevant, articles 5-11 are reproduced in full:

> "5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.
>
> 6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.
>
> 7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

> 8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.
>
> 9. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.
>
> 10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.
>
> 11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account."

73. In resolution 31/82 of 13 December 1976, the General Assembly recommended that "all Member States should take account of the rights and principles laid down in the Declaration on the Rights of Disabled Persons in establishing their policies, plans and programmes" and that "all international organizations and agencies concerned should include in their programmes provisions ensuring the effective implementation of those rights and principles".

74. In decision 1979/24, adopted on 9 May 1979, the Economic and Social Council took note of the Declaration on the Rights of Deaf-Blind Persons, which had been formulated and adopted by the Helen Keller World Conference on Services to Deaf-Blind Youths and Adults on 16 September 1977, and decided to bring it to the attention of the General Assembly as part of the documentation submitted under the question of the International Year of Disabled Persons.

75. Article 1 of the Declaration reiterated the fundamental principle that:

> "Every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights and the rights provided for all disabled persons by the Declaration on the Rights of Disabled Persons".

76. In addition to the provisions already mentioned, there are many other international instruments protecting human rights which, inasmuch as they are designed to prevent certain abuses which might cause disability, deserve recognition for their preventive value. For example, in 1955 the First United Nations Congress for the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners,

article 31 of which states that corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

77. In resolution 34/169 of 17 December 1979, the General Assembly adopted the Code of Conduct for Law Enforcement Officials and transmitted it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. Article 5 of the Code reads as follows:

> "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment".

78. In resolution 37/194 of 18 December 1982, the General Assembly adopted the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment. The first of the Principles of Medical Ethics states that:

> "Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained."

79. Principle 2 states that:

> "It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment."

80. Further to what was stated in the introduction, it should be noted that on 16 December 1976 the General Assembly, in resolution 31/123, proclaimed the year 1981 International Year of Disabled Persons. The theme and objective of the Year were "full participation and equality", defined as the right of disabled persons to participate fully in the social life and development of their societies, to enjoy living conditions equal to those of their fellow citizens, and to have an equal share in improved conditions resulting from socio-economic development. Other objectives included increasing public awareness, understanding and acceptance of disabled persons and encouraging them to form organizations through which they could effectively express their views and call for action to improve their situation.

81. On 3 December 1982, the General Assembly, in resolution 37/53, proclaimed the period 1983-1992 United Nations Decade of Disabled Persons and encouraged Member States to utilize this period as one of the means to implement the World Programme of Action concerning Disabled Persons. This programme, which is currently being implemented and to which we will make numerous references throughout this document, recognizes "equalization of opportunities" as an objective as well as a means of achieving full participation in all areas of social, cultural and economic life. The explicit recognition of the right of every human being to the "equalization of opportunities" gives a clear legal consistency to the juridical treatment of issues concerning disabled persons, and adds a human rights dimension which, previously, there was an unwillingness to acknowledge.

82. The most important development in recent times has been Economic and Social Council resolution 1990/26 of 24 May 1990, authorizing the Commission for Social Development to establish an ad hoc working group of government experts to elaborate standard rules on the equalization of opportunities for disabled children, youth and adults. 12/ This instrument, which is in the process of formulation, is of fundamental interest to us. It will in fact be the first international instrument not only to be universal in scope and to refer specifically to disabled persons, but to contain an extremely broad and comprehensive statement of the right of disabled persons to equal opportunities. Furthermore, the standard nature of the rules to be formulated emphasizes their highly legal and imperative character.

G. Summary and assessment

83. The three main conclusions to emerge from the extensive catologue of international instruments which we have analysed are:

(a) The principle of equality of rights - inherent in the concept of human rights and expressly embodied in all the instruments - confers on disabled persons the same rights as on other persons in general;

(b) Disabled persons also have specific rights. See, for example, the next paragraph and chapter IV;

(c) These rights do not appear in any formal listing but are scattered throughout a number of legal instruments, or have been recognized by the courts. In fact, what might be termed the specific rights of disabled persons are only the material and legal expression of the minimum contribution which the community or the State should make towards ensuring that such persons can enjoy on an equal basis all the human rights enjoyed by individuals in general. Strictly speaking, this is not even what is known in legal terminology as "positive discrimination" (affirmative action) but simply equalization.

84. Lastly, the specific rights of disabled persons - the right of a deaf-mute to have an interpreter during trial proceedings, etc. - in addition to being rights *per se*, are also the means of realizing other fundamental human rights on an equal basis, such as, in this case, the right of defence.

The lack of an interpreter in criminal proceedings where the accused is a deaf-mute not only infringes a procedural norm, but purely and simply negates the right of defence.

85. Lastly, the question of the protection of the human rights of disabled persons has a dual dimension. On the one hand, there is the problem of specific legal guarantees - interpreter, specialized legal assistance, etc. so as to guarantee a fair and equitable judgement - and on the other hand there is the acute problem of the lack of specific effective resources to put an end to the violations of which, as disabled persons, they are victims. These two issues will be dealt with in chapter IV.

H. Terminology, definition and statistics

1. Terminology

86. In his preliminary report (E/CN.4/Sub.2/1985/32), the Special Rapporteur described the unduly narrow interpretation and, in some cases, the pejorative connotation of the terms used in everyday language and in legal texts to refer to disability and disabled persons. 13/ Spanish, for example, has numerous terms to describe disabled persons: minusválidos, inválidos, impedidos, lisiados, incapacitados, paralíticos, mutilados, retrasados, etc., and while each expression has its own connotation, the terms may on occasion be used indiscriminately and in many cases involve what amounts to a devaluation of the person. For example, the Spanish term inválido, means "without value". However, this latter expression has become current internationally with a sense other than its literal meaning. The International Labour Organisation (ILO) in its various conventions generally uses in Spanish the expression inválidos o personas inválidas, while the various United Nations bodies tend to use the term impedidos. The present trend is to discourage any reference which describes a person in terms of his functional limitations, for example, los ciegos ("the blind") and to prefer expressions such as una persona con una deficiencia visual ("a person with impaired vision"). French shows similar trends and the expression non voyant is more and more tending to replace the word aveugle.

87. The keen controversy over terminology which exists in Spanish does not seem to be as fierce in other languages. On the basis of his own analysis which appears in paragraphs 8 and 9 of his preliminary report and in view of the comments and suggestions made at earlier sessions of the Sub-Commission, the Special Rapporteur decided to use as equivalent terms the expressions "disabled" (in English), handicapé (in French), инвалид (in Russian) and personas con discapacidad (in Spanish). Although the Sub-Commission's resolution 1984/20, like the World Programme of Action, refers to impedidos, the Special Rapporteur has preferred the above expression in Spanish since the term discapacidad is a clearer and more scientifically accurate way of describing an ability different from the norm, which when preceded by the words persona con removes all pejorative connotations. Lastly, where, thankfully, some terminological standardization has begun to appear is in the expression enfermos mentales, since the Working Group of the Commission on Human Rights on the Question of the Draft Body of Principles and Guarantees for the Protection of Mentally-Ill Persons adopted the use of this term by consensus. 14/

88. This is the moment to point out that the terminology issue is closely related to the problem of the definition and neither can fail to take account of the international instruments in force or the domestic legislation of different States. It is therefore necessary to take account of existing definitions and to respect the terminology used by each body, organization or Government. This explains why the Special Rapporteur, having expressed his preference for the expression personas con discapacidad, uses many other terms in the course of the study, particularly when quoting international instruments, provisions of domestic law, or documents or replies from Governments or organizations.

2. Criteria for a definition

89. The World Health Organization (WHO), in the context of its health experience, makes the following distinction between impairment, disability and handicap which was included in the World Programme of Action:

> "Impairment: Any loss or abnormality of psychological, physiological, or anatomical structure or function.
>
> Disability: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.
>
> Handicap: A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual."

90. According to the definition contained in the Declaration on the Rights of Disabled Persons, the term "disabled person" means "any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities". The International Labour Organisation (ILO), in its Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159, Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled and Recommendation No. 168 on Vocational Rehabilitation and Employment (Disabled Persons) states that "'disabled person' means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment". In its explanatory notes on the implementation of the above instruments, ILO reproduced the definitions of the World Health Organization for clarification purposes. However, it was pointed out that the use of the words "impairment", "disability" and "handicap" might give rise to some difficulty of interpretation when applied to the provisions of those ILO instruments.

91. According to the World Programme of Action, handicap is a function of the relationship between disabled persons and their environment. It occurs when they encounter cultural, physical or social barriers which prevent their access to the various systems of society that are available to other

citizens. Thus, handicap is the loss or limitation of opportunties to take part in the life of the community on an equal level with others, representing socialization of an impairment or disability.

92. A WHO Expert Committee on Disability Prevention and Rehabilitation 15/ meeting in 1981, with reference to the definitions of the International Classification of Impairments, Disabilities and Handicaps (ICIDH) agreed that impairments and disabilities may be visible or invisible, temporary or permanent and progressive or regressive. Members gave the following examples to illustrate their interpretation of the terms:

> A patient with hypertension (disease) is affected by cerebral haemorrhage (impairment) which leads to right-sided hemiplegia causing walking, writing and speech difficulties (disabilities). If the patient does not recover sufficiently to resume work or to be able to live an independent life, his disadvantage is considered a handicap. 16/

93. The Committee pointed out that classifications, characterizing long-term consequences of disease and trauma, such as WHO's ICIDH, had been tried only recently. The disease process was described at points in its progression beyond its active state in the following way:

(i) from its cause or origin (etiology);

(ii) to its active state (pathology);

(iii) to the long-term consequences of health status or organic function (impairment);

(iv) in terms of long-term functional change in body appearance or movement (disability);

(v) from the perspective of limitations confronted in socio-economic or life-supporting roles attributable to the interaction between the person with impairments or disabilities and environmental constraints (handicaps). 17/

94. Reasonable agreement among the health and medical community on specific parts of the ICIDH concepts and classifications was expressed. For example, it was generally agreed 18/ that: impairment includes description of the loss or abnormality of psychological, physiological, or anatomical structure or function at the level of the organ or anatomical structure or function; disability includes description of human function and activity at the level of the person; and handicap includes description of restrictive circumstances or disadvantages at the level of social and economic roles. However, disagreements do arise when linking these concepts to specific operational definitions and also problems occur when applying the ICIDH in social policy and programme formulation and implementation.

95. The Special Rapporteur wishes to point out that there is a close relationship and considerable overlap between elements in the impairment, disability and handicap definitions. This is exemplified in the failure to specify the degree of severity of disability which is often a predictor of

handicap and in the problems of grading and problems of boundaries with handicap and impairment which are particularly important in the field of mental disability. In any case, the WHO definition has been extremely useful, at least for statistical purposes, in giving some degree of homogeneity to domestic legislation and even in standardizing criteria internationally. The Statistical Office of the United Nations uses this definition as well as country classifications in disability cross-tabulations for censuses and surveys.

96. It is essential to bear in mind that the definitions of the WHO Classification were made in the context of health experience and are therefore basically clinical and do not incorporate the social and cultural aspects which are necessarily present in disability and impairment. For example, persons may be treated as if they were disabled and subjected to many kinds of restrictions (occupational, social, educational, etc.) although from a clinical point of view they are not actually disabled. Frequently, persons who have been disfigured by burns, although not incapacitated, are treated as disabled persons simply because of the external effects. Something similar is usually the case with persons who have abnormal heads or facial features, but whose mental and physical faculties are unimpaired.

97. Since WHO adopted and published the ICIDH in 1976, the organization has been encouraged to continue to revise the Classification, and particularly to incorporate social and environmental factors in the definition of handicap and give special attention to the problem of impairments and disabilities regarding mental health and mental handicap. General Assembly resolution 37/53 may in particular be recalled in this context along with WHO's proposals in this regard which were put forward at the fifth inter-agency meeting at Vienna from 18 to 20 February 1987. 19/ The revision has not materialized, however, 20/ and it is to be hoped that it will do so before 1993, the final year of the United Nations Decade of Disabled Persons.

98. The importance of refining the definition is obvious when it is observed that two thirds of the Governments which sent replies to the Special Rapporteur use the international WHO definition contained in the World Programme of Action. Compared to the developed countries, an even greater proportion of developing and least developed countries reported that they used those definitions. Furthermore, 18 countries reported that, while their Governments had adopted no legal definitions of those terms, they none the less used the international definitions. Sixteen of these also happened to be among the developing or least developed countries. Other States which submitted information to the Centre did not have general legal definitions of disability or disabled persons but there were legal definitions in respect of different legal regimes (Social Insurance Act, Special Education Act, Labour Act) and applied to different disabled groups (victims of labour accidents and injuries, disabled children, mentally ill persons). 21/

99. At the same time, the domestic legislation of many States provides a concept of "disabled person" based on the qualifications referred to above, but in relation to the individual's functional capacities in the social, labour and other types of environment. The definition of "disabled person" varies considerably from one country to another, and even within the same State it can differ from one legislative sector to another. The concept of

total or partial incapacity for work due to illness or accident appears as a universal criterion in systems of disability insurance and workers' compensation for industrial accidents, 22/ and it also seems to constitute the basis of all the legislation on the disabled in a number of countries. 23/ Some of the replies reveal a tendency to adopt broader concepts, which take into account the possibility of participating on an equal basis and in an independent manner in all spheres of social life, 24/ including - as is sometimes expressly stated - leisure and recreational activities. It remains to be determined how far these new concepts have permeated into the law, administrative practice and judicial decisions.

100. In defining a disabled person, domestic laws use different criteria, characteristics or classifications. For example, some include total and partial impairment of senses, and physical and intellectual capacities. 25/ Others refer to a handicap or deviation of a social nature, 26/ injury or illness, 27/ or incapacity to accomplish physiological functions 28/ or to obtain and keep employment. 29/ Some definitions refer to age as a factor of disability. 30/ These definitions usually also reflect the consequences for the individual - cultural, social, economic and environmental - that stem from the disability. Of these the following may be mentioned: inability to function normally in certain areas of social life, 31/ and restricted possibilities of education, rehabilitation and employment. 32/

101. Since the revision of the WHO International Classification has not yet taken place and since a set of standard rules on the equalization of opportunities for disabled persons is in preparation, the Special Rapporteur considers that it will be sufficient to restrict himself to outlining some basic criteria which the future definition should contain so that it will encompass, in addition to the medical and clinical aspects of disability, the social and cultural factors attendant on disability. It may be recalled here that the members of the Sub-Commission at its fortieth session agreed with the proposal to formulate a definition of the essential criterion of which would be the existence of specific long-term problems affecting the person or behaviour of the disabled person and constituting major long-term obstacles to the enjoyment of human rights, to equality of opportunity and treatment, to social participation and to independent living.

102. During the discussion many of the experts stressed the advantages of this formula 33/ as being neither too broad nor too restrictive. The balance which was required in the definition involved both clinical and socio-cultural aspects. Too broad or too vague a formula from the clinical point of view ran the risk of undermining its primary objective, which was to protect the human rights of persons who really needed protection, in other words, those who suffered from some type of disability and were therefore in a situation of genuine disadvantage. It was this that justified, or rather required, special attention (regulation). On the other hand, a narrow definition from the socio-cultural point of view meant that a large number of persons who obviously needed protection might be cut off from it. In other words, where this aspect was concerned, the definition needed to be capable of a broad interpretation in order to be compatible with concepts applicable to human rights and to serve as a universal reference.

103. From the medical point of view, the Special Rapporteur considers that the expressions "functional change" or "disorder", "permanent or prolonged", "physical or mental" reflect simply, clearly and generically the clinical elements contained in the WHO International Classification. The notion of "considerable disadvantages" (having regard to age and social environment), "for the purposes of his family, social, educational and occupational integration and/or the enjoyment of human rights", introduces the socio-cultural factors which are missing from the International Classification, but which have been incorporated into the domestic legislation of many countries.

104. While the Special Rapporteur makes no claim to formulate a universally valid definition - the drafting of which should be the responsibility of the Ad Hoc open-ended working group of government experts to elaborate standard rules on the equalization of opportunities for disabled persons - he considers that the conjunction of these clinical and socio-cultural elements, on which there is a clear consensus, enables a disabled person to be defined as follows:

> "Any person suffering from a permanent or prolonged functional disorder, whether physical or mental, which having regard to his age and social environment entails considerable disadvantages for the purpose of his family, social, educational or occupational integration, and for the effective enjoyment of his human rights, shall be considered disabled."

This formula, it should be reiterated, not only takes clinical aspects into account, but also the specific issues which affect disabled persons and create certain obstacles to the enjoyment of their human rights, to equality of opportunities and treatment, to their participation in society and to their independence.

3. Statistical estimates

105. Differences in definitions, both within countries (and sometimes from one agency or service to another) and among countries, as well as the technical shortcomings of censuses (in some countries, population censuses do not even identify disabled persons) and particular social attitudes of uneasiness or shame towards disabled persons, make it very difficult to establish reliable statistics on the number of persons composing this population, the origin of its problems and, still less, the way disabilities will develop over time. The Government reports thus vary greatly in this regard and the only common feature they have is that they all accept WHO estimates as valid.

106. If these are correct and we accept as valid the figure of 500 million disabled persons in the world, 140 million of them are children. In addition, some 300 million live in developing countries and therefore have to cope with their disability in what are usually adverse economic and social conditions. It is estimated that only 1 per cent of these 300 million persons have access to assistance, rehabilitation and appropriate services, with the result that there may well be 297 million disabled persons in these countries who have no possibility of living a dignified life, with full participation in society and equality of opportunity. According to an ILO estimate, one third of the total

number of disabled persons are women, i.e. about 160 million. In referring to the causes of disability in the next chapter, we shall give a much fuller statistical picture.

107. Many replies, particularly those from developing countries, consider that the number of disabled persons as a percentage of the total population - estimated at between 6 and 10 per cent at present - will increase in the years to come, despite the progress some of them have made in respect of health and rehabilitation. One reason is that life expectancy is longer in much of the world and the number of disabled persons increases with age. In the developing countries, moreover, account must be taken of the high rate of population growth. It is estimated that, during the next 40 years, the world population will increase from 5 billion to slightly more than 8 billion, but the group of persons aged 65 and over is expected to double in the developed countries and to quadruple in the developing countries and, in all countries, this is the group with the largest proportion of disabled persons. It should also be pointed out that economic and technological advances are leading to new causes of disability, such as traffic accidents, industrial accidents, heart and circulatory disease, drug abuse and environmental pollution. This means that there are countries which are beginning, as a result of the progress made, to eliminate some causes of disability (malnutrition, poliomyelitis, measles, etc.), but new causes are emerging and they require different policies of prevention.

108. It should also be recalled that the World Programme of Action concerning Disabled Persons recommends that Governments should collect data on disabled persons through national population censuses, household surveys, etc., and disseminate the information obtained. In accordance with this recommendation, the Statistical Office completed a microcomputer database in 1988 called "United Nations Disability Statistics Database" (DISTAT). The first statistical compendium on disabled persons was published in 1990; 34/ it contains detailed information on 55 countries and covers 12 demographic and socio-economic topics, namely, age, sex, residence, educational level, economic activity, marital status, family environment, causes of disability and special auxiliary means used. The main objective of the publication is to draw attention to the work being done at the national level in favour of disabled persons, but, above all, to make headway in the preparation of international statistics. 35/ Perhaps the key aspect of the compendium is the valuable information it provides on various methods of obtaining new statistics to facilitate the comparison of data and the broader use of the conclusions by persons responsible for planning, policy-making and research.

II. FACTORS CAUSING DISABILITY

A. Multiple causes

109. In the replies received from governmental and non-governmental sources, the causes of disability mentioned most often are the following: heredity, birth defects, lack of care during pregnancy and childbirth because of lack of coverage or ignorance, insalubrious housing, natural disasters, illiteracy and the resulting lack of information on available health services, poor sanitation and hygiene, congenital diseases, malnutrition, traffic accidents, work-related accidents and illnesses, sports accidents, the so-called diseases of "civilization" (cardiovascular disease, mental and nervous disorders, the use of certain chemicals, change of diet and lifestyle, etc.), marriage between close relatives, accidents in the home, respiratory diseases, metabolic diseases (diabetes, kidney failure, etc.), drugs, alcohol, smoking, high blood pressure, old age, Chagas' disease, poliomyelitis, measles, etc. Non-governmental sources also place particular emphasis on factors related to the environment, air and water pollution, scientific experiments conducted without the informed consent of the victims, terrorist violence, wars, intentional physical mutilations carried out by the authorities and other attacks on the physical and mental integrity of persons, as well as violations of human rights and humanitarian law in general.

110. Although the following table prepared by WHO is based on very different criteria from those used in this study, it gives an idea of the number of cases of disability to which the various causes give rise: 36/

Non-contagious somatic illnesses	100 million
Injuries/wounds	78 million
Malnutrition	100 million
Functional psychiatric disorders	40 million
Chronic alcoholism and drug abuse	100 million
Congenital diseases	100 million
Contagious diseases	56 million

111. For purely pedagogical reasons, the Special Rapporteur decided in his preliminary report to divide the causes of disability into general and specific ones in order to distinguish, to the extent possible, between causes which do not necessarily entail violations of human rights, such as natural disasters, irreversible diseases and old age, and "specific" causes, such as torture, ill treatment, amputation, environmental pollution, etc., where disability is the direct or indirect consequence of a violation of human rights. The purpose of this distinction is simply to place emphasis on the latter causes and to focus on the two aspects of this problem, namely, human rights violations as causes of disability (chap. II) and violations of which disabled persons are the victims (chap. III).

General causes which do not necessarily entail violations of human rights

112. By way of illustration, we will briefly describe some of the general causes of disability to which the Special Rapporteur's attention has been drawn in particular because they are so frequent or so serious. For example, cardiovascular diseases are referred to in some of the reports received as the cause of a great many cases of disability. The way of life in large cities and the tension it produces, as well as the new needs constantly being created and the keen competition in consumer societies, are the cause of these diseases, which are usually regarded as diseases of civilization, development and urban living, and this is why they are much more frequent in industrialized countries.

113. Neuromuscular diseases are also the cause of many disabilities. There is, unfortunately, no way of preventing or combating many of them. The most common symptom of these diseases is a loss of strength, which may be apparent at birth or start gradually at any age. One of the best known is Duchenne's dystrophy, which, for still unknown reasons, leads to the progressive destruction of the skeletal muscles. It affects men, but is transmitted by women.

114. Traffic accidents are referred to in nearly all the reports as a cause of disability, although they are obviously more frequent in the more developed countries. According to WHO, 500,000 persons are seriously injured in traffic accidents each year and many of these 500,000 seriously injured persons are probably permanently or temporarily disabled. Industrial accidents are also mentioned in a number of reports as a cause of disability, although to a lesser extent than traffic accidents. According to the International Labour Organisation, 50 million accidents occur annually in industry and many cause disability. Industrial accidents have stayed at the same level in the developed countries, but are on the increase in countries which are in the process of industrializing. This is a result of the difference in the strict application of work safety standards in developed and developing countries. It is also a result of the fact that, when a country is constantly taking on more workers in the industrial sector, they go through a learning period when they are more accident-prone.

115. Natural disasters are also a very important cause of disability, although their quantitative effect is not known, since persons who are disabled as a result of an earthquake, flood or other disaster are not identified according to the source of their disability. During the International Year of Disabled Persons, the Office of the United Nations Disaster Relief Coordinator (UNDRO) conducted research in four developing countries where disasters occurred during the period 1976-1980 for the purpose of studying the conditions of persons who had been disabled in some way as a result of a disaster and it reached the conclusion that the scientific and medical community pays little or no attention to victims who have been disabled. The four countries are Algeria and Guatemala, where earthquakes occurred, and Santo Domingo and Haiti, which were hit by hurricanes, and, according to the report (included in the UNDRO publication on disasters and disability), the long-term effects of disasters on health are not well-documented and this is why the reconstruction plans of disaster-stricken countries include many aspects relating to

renovation, but often overlook the physical and mental rehabilitation of persons. The consequences of disasters are usually expressed in monetary terms and human suffering is expressed quantitatively as the number of persons killed or left homeless and injured, but the latter is an amorphous category that is difficult to define and includes many persons who are affected by some kind of disability, whether temporary or permanent. During earthquakes, there is usually one person killed for every three injured; the earthquake at Skopje, Yugoslavia, in 1963, left 1,070 dead and 3,500 injured, 1,200 of whom were permanently disabled.

116. The reports also refer to diseases such as poliomyelitis, which has been eradicated in much of the world, but still strikes more than 400,000 persons in Africa, Asia and Latin America each year. Of the diseases which mainly affect children, reference is also made to measles, which not only kills 2 million children each year, but is also one of the main causes of blindness, deafness and mental defects. Over 800 newborn children die as a result of tetanus each year and an even greater number survive with major handicaps. Chickenpox is also a major cause of blindness and deafness. One of the causes of mental defects is the lack of iodine, which, in the first year of life, leads to deafness and dumbness and mental impairments, especially in mountain regions. Vitamin A deficiency is another of the main causes of blindness in developing countries and it weakens children's defences, thus promoting all kinds of infections, which, in many cases, cause death.

117. Chagas' disease is referred to by only one country (Argentina) as a cause of disability, but it has spread throughout Latin America and affects millions of persons. Chagas-Mazza disease affects 4 million persons in Brazil; 3 million in Argentina; and 700,000 in Colombia. In Ecuador, it is estimated that between 10 and 12 per cent of the population is infected, while, in Chile, 300,000 persons and, in Venezuela, 1.2 million persons are affected. All in all, the experts calculate that the _trypanosoma cruzi_ parasite may be carried in the blood of about 30 per cent of the population of Latin America. Although only between 20 and 30 per cent of the persons infected show unmistakable signs of the disease, they are a serious potential danger, since it has been demonstrated that one of the most common ways the parasite spreads is through blood transfusions, although it may also be spread by the vector insect popularly known in Argentina as _vinchuca_. The disease prevents persons from leading a normal life and, especially, from working and is also a cause of death.

118. Some replies refer to Down's syndrome (mongoloidism) and dwarfism (achondroplasia) as non-preventable and incurable diseases which affect children. Others regard old age as a cause of disability because of the gradual loss of various abilities as the human organism deteriorates.

B. Violations of human rights and of humanitarian law as factors causing disability

119. The role of violations of human rights and of humanitarian law as causes of disability is the main focus of this chapter, which has been divided into sub-topics in order to deal with the problem in all its complexity, i.e. starting with the most obvious manifestations, such as torture and other

attacks on the physical or psychological integrity of persons, going on to less specific causes, such as malnutrition, the lack of sanitation and of proper medical care and underdevelopment in general, and then considering the deplorable situation of many disabled persons who also belong to other particularly vulnerable categories or groups, such as immigrants, refugees, etc.

120. The existence of a causal link between the two phenomena (violations and disability) was first highlighted by some special rapporteurs appointed by the Sub-Commission and the Commission on Human Rights, who drew attention to this twofold problem on a number of occasions in referring to the topics entrusted to them (torture, arbitrary detentions, for example) or the situation of the countries within their terms of reference (Chile, Iran, Afghanistan, El Salvador, etc.). However, it was at the urging of the non-governmental organizations concerned that this question took on its own personality and the problem of disability could be considered by bodies responsible for the protection of human rights from the standpoint of and in connection with violations.

121. In addition to the lengthy bibliography that now exists and is composed of reports and studies to which we have referred on the relationship between violations of human rights and disability, it should be noted that the mandate of the bodies affording protection has been expanding and now even includes specific undertakings, as, for example, in resolution 1988/13 entitled "The situation of human rights in El Salvador", by which the Sub-Commission requested the Special Rapporteur on Human Rights and Disability "to undertake all measures that are within his reach tending towards achieving the prompt and regular evacuation of the war wounded and disabled and inform the Sub-Commission ... as to the result of his humanitarian effort". The Government of El Salvador cooperated with the Special Rapporteur and informed him of the measures it had adopted in that regard, drawing particular attention to those of a legislative and practical nature.

122. There are quite a few examples of widespread violations of the rules of humanitarian law which may cause temporary or permanent disability and have particular effects on disabled persons. In the preceding chapter (paras. 61-64), we referred to the Third and Fourth Geneva Conventions of 1949 and Protocols I and II Additional thereto, placing particular emphasis on the prohibition of violations of humanitarian law which might cause disability or have a particular impact on disabled persons.

123. According to Hans Hoegh, Special Representative of the Secretary-General for the Promotion of the United Nations Decade of Disabled Persons, under normal circumstances, disabled persons represent approximately 7 per cent of the population of the developing countries. 37/ In conflict situations, however, this figure increases to approximately 10 per cent. In Cambodia, for example, tens of thousands of persons have been left disabled as a result of the serious war injuries received since 1970. Although there are no national statistics available on the number of war cripples, local statistics show that persons who have had limbs amputated represent a significant proportion of the disabled population (over 80 per cent). The affected population in the refugee camps is estimated at 6,000 persons.

124. It is obvious that the nature and extent of the harm suffered by the victims of a situation of violence or an armed conflict depends to a large extent on the combat methods used and the use of certain particularly harmful firearms, bombs, explosives, etc. Land mines are one of the most frequent sources of disability, both in international armed conflicts such as the Iran-Iraq war and in internal armed conflicts, for example in El Salvador, and also in conflicts of a mixed nature, as in Afghanistan before the withdrawal of Soviet troops. Unfortunately this conflict is continuing in the form of a civil war, and the number of victims is increasing. In Afghanistan, but especially in Pakistan, there are special sections in hospitals that are filled with persons injured by exploding mines. 38/

125. The devastating effects of the use of chemical weapons on life, the environment and the survivors' health is a topic of growing concern for the international community and the United Nations in particular. Thus, at its fortieth session, the Sub-Commission adopted resolution 1988/27 of 1 September 1988, entitled "Respect for the right to life: elimination of chemical weapons". The resolution stated that the Sub-Commission was deeply shocked and saddened by the destruction of human life, life-long disabilities and great suffering caused by chemical weapons and indicated the necessity for the international community to take urgent and effective measures to prevent the future use of chemical weapons in violation of international law in order to protect human life.

126. In a specially-prepared report on violations of international humanitarian law, Disabled Peoples' International (DPI) indicated that, although all wars have their wounded, very frequently a large number of permanent disabilities are the result of illegal military operations, ill-treatment of prisoners of war, refusal to attend to the wounded or interference with the humanitarian action of civilians. The report goes on to indicate the gravity and frequency of certain attacks on refugees or places of refuge housing defenceless persons often deprived of any food aid or medical supplies. It also mentions the repeated armed attacks on hospitals and health staff assigned to wounded, ill or disabled persons. These are reprehensible acts from every point of view, says the organization, and no strategic considerations can justify them. What is more, persons who have suffered serious injury or have any type of disability are not only defenceless but are obviously at a disadvantage in terms of escaping the attack.

C. Suffering inflicted on non-combatants in situations of armed conflict or civil strife

127. Unlike the past, when wars generally took place on the battlefield and most victims were soldiers or combatants, today, as a result of the proliferation of internal conflicts (in which the civilian population is much more exposed) and because of the development of certain weapons with enormous destructive power, the number of civilians affected by the violence is considerably greater than the number of combatants themselves. 39/ According to available information, women and children account for over three quarters of the victims of armed conflicts in over 50 countries. 40/ In the last decade over 1 million children in poor countries have died as a direct consequence of war. For each dead child, three more are estimated to have been injured or physically disabled and many more psychologically damaged. 41/

128. Although the most relevant aspects relating to women and children will be dealt with specifically in section D of this chapter, the above-mentioned information clearly illustrates the huge influence of armed conflicts and situations of violence in creating disabilities and also highlights their negative impact on the population in general and on disabled persons in particular. In this connection, we also believe it is important to stress the extremely complex and delicate situation in which persons with any type of mental disability frequently find themselves during these conflicts. Under such circumstances persons with disabilities are often deprived of all care and even of their most vital needs. Obviously this state of affairs usually leads to isolation, depression, distress, and therefore an increase in mental disturbances. At other times persons opt for concealment and, terrorized, flee society in the hope of finding refuge in places where they are not always safe and where it is difficult for them to find any help.

129. Also in connection with the suffering inflicted on non-combatants, the Special Rapporteur has received extensive information on events in Afghanistan, Angola, Cambodia, East Timor, El Salvador, Ethiopia, Mozambique, Sri Lanka, etc. However, most of the communications he has received on this question refer to the situation in the Israeli-occupied Arab territories. By way of illustration, some 1,000 Palestinians have died and tens of thousands have been injured since the intifada began. According to a letter addressed to the Special Rapporteur by the representative of Palestine to the United Nations, between December 1987 and February 1991 over 8,000 Palestinians were permanently disabled as a result of Israeli policy in the occupied territories. 42/

D. Insufficient care and cruelty towards children and women

130. The non-governmental organizations stress the fact that the rising wave of terrorism, the increase in military repression in certain regions, the frequent use of weapons with high destructive power and shortages imposed by war have truly devastating consequences for the most vulnerable and defenceless groups of society such as women and children. A recent survey of Afghan refugees and persons displaced within their own country highlighted the fact that the main victims of air bombings were women, children, adolescents and elderly people.

1. Children

131. The Special Rapporteur on States of Emergency indicates in his latest report that in South Africa, which has systematically resorted to the adoption of emergency measures, between June 1986 and August 1987 approximately 30,000 persons were detained for periods of more than 30 days, of whom 40 per cent were children under 18 years of age. The reports of the Ad Hoc Working Group of Experts on Southern Africa mention many cases of torture and inhuman treatment of civilians and young children. The thousands and thousands of child soldiers in Iran, Afghanistan and many other countries in the world complete this partial listing of acts of cruelty towards children.

132. It would be unfair to ignore the tragic situation of displaced or refugee children, of whom there are approximately 15 million today and who, in addition to the risks from the conflicts themselves, must suffer the

heart-rending trauma of being uprooted. In many cases they are also forced to change residence frequently. The displaced are frequently subjected to military controls when travelling from one temporary camp to another, and they are not allowed to resume their normal lives. Unlike refugees, who because they have crossed frontiers can have the immediate support and protection of the United Nations High Commissioner for Refugees, displaced persons usually have greater difficulty in obtaining international protection since they remain in their own countries. This raises a series of problems when one or both parties to the conflict limit or prevent access to aid and rehabilitation. 43/

133. Among the injuries that usually create permanent disabilities in children during armed conflicts are injuries to the brain and spinal cord, bone deformities in the arms and legs and loss of sight, hearing or mental capacity. That is to say, diseases producing disabilities that have not yet been erradicated, such as meningitis, tuberculosis, poliomyelitis, etc., have now been joined by diseases that are the result of war and of lack of care, such as: open fractures, bone and tendon infections and deformities due to delay in medical care or lack of proper treatment. In the case of children, it is particularly serious when the bones in the deformed limbs begin to grow.

134. From the psychosocial point of view, the traumas caused in children by the conflicts usually have a very harmful effect on them psychologically. Many children, deprived of the security that is the basis for a child's natural development and subjected to constant tension for a lengthy period of time, become chronically sad and anxious and display behavioural disturbances of varying degrees of intensity. 44/

135. Unfortunately, during armed conflicts some developing countries assign all existing rehabilitation services to adults, especially combatants and the military. In such circumstances, children and women are generally given no assistance at all, while in other cases assistance is minimal. In the armed conflicts in Angola and Mozambique, for example, less than 10 to 20 per cent of the children received inexpensive prosthetic devices. In Nicaragua and El Salvador, only 20 per cent of children in need were provided with the necessary services. From 1 to 10 per cent of the Afghan refugees receiving care in Afghanistan were children. 45/

136. The Special Rapporteur wishes to pay a tribute to the UNICEF strategy for the prevention of disability since it includes a higher degree of early detection of disability and intervention at the community level to respond adequately in cases of children with traumatic injuries. It also includes greater supply of prosthetic devices, the production of wheelchairs and inexpensive prosthetic and orthopaedic devices and the training of highly-skilled therapists able to deal with emergency situations.

137. In addition to the situations of violence and their effects on children, emphasis should also be placed on other factors that might have a negative influence on children, such as child labour. Working at a young age can have terrible consequences for the child's mental and physical development. Children are not physically equipped to withstand long hours of exhausting and monotonous work. Their bodies are much less resistant to the effects of fatigue and effort than are those of adults. Many of them are already suffering from malnutrition, which further saps their stamina and makes them

more vulnerable to disease. Carrying heavy weights and working in uncomfortable circumstances in small factories can produce deformities, especially of the bones. Children working in the manufacturing sector are more exposed to accidents and occupational hazards than adults. They have less experience in handling tools, tire much more easily than adults and have a shorter attention span: a split second's carelessness can mean a permanent disability. 46/

138. In most of the world, prenatal diseases and diseases in infancy as a result of malnutrition are cited as major causes of disability in children. Infants who are given food of low nutritional value and drink non-potable water suffer from severe diarrhoea which, if the child survives, leads to chronic anaemia due to lack of iron, which in turn contributes to a poor state of general health and is a factor in learning disorders. Lack of proper nutrition is mentioned in the majority of the replies received as one of the factors most affecting children's mental or physical growth. As mentioned earlier, lack of vitamin A causes blindness in hundreds of thousands of children every year and lack of iodine causes loss of hearing, goitre, a marked decline in mental faculties and cretinism. In this connection, the provisions of article 24 of the Convention on the Rights of the Child, which in paragraph 2 (c) recognizes the child's right to "the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;" are very encouraging.

139. The human rights protection bodies, and the Sub-Commission in particular, have taken a deep interest in the prevention of certain traditional practices, such as female circumcision, which because it causes injuries in children is considered to be a serious abuse of children. This has contributed considerably to the adoption of various provisions in the Convention on the Rights of the Child. One of them, contained in article 19, stipulates that children shall be protected from all forms of physical or mental violence, injury or abuse ... including sexual abuse. Similarly, under article 24, paragraph 3, States parties shall take all effective and appropriate measures "with a view to abolishing traditional practices prejudicial to the health of children". Finally, the physical and psychological ill-treatment of children, both within and outside the family, is a topic that has been poorly understood in the past but that is an extremely serious cause of disability in both developed and developing countries. The harm that can be caused in children by their parents or other persons beating, insulting, humiliating and maltreating them can be so great that in many cases it causes mental illness, social maladjustment, difficulties in school or at work, sexual impairment, etc. Another problem, of a complexity requiring a separate study, is the traffic in children's organs that is taking place in developing countries especially.

2. Women

140. Much of what has been said concerning the situation of children during armed conflicts also applies to women as a sector of the civilian population that is particularly affected by violence. Thus we would now like to focus our attention on the negative consequences for women of the persistence of certain cultural barriers that make them the victims of a twofold discrimination: as women and as disabled persons. Much has been written on

discrimination against women, but very little has so far been done to deal adequately with the problem of disabled women. The few attempts made have been based on a mistaken approach, since they treat the acute problem of disability as part of the general topic of discrimination against women. However, sex and disability are two separate factors which, when combined in the same person, usually reinforce each other and compound prejudices.

141. It has been proved that women in many countries are disadvantaged with respect to men from the social, cultural and economic points of view, which makes it very difficult for them to have access to health services, education, vocational training, employment, etc. This statement, which is valid for women in general, also applies to disabled women. For the latter, however, the lack of access to health services will certainly aggravate their disability or make it difficult for them to be rehabilitated quickly by making their participation in community life even more problematic.

142. All the arguments adduced in favour of women's full participation in the various spheres of cultural, political, economic life, etc., are doubly applicable to disabled women, not only regarding equal rights, but also with respect to the negative consequences for society in general of neglecting any human resource for the community's failure to use it turns it into a burden for that community. It is sufficient to realize that over 250 million disabled persons throughout the world are women to understand the importance of the issue and its close links to all development questions. Women make up three quarters of disabled persons in the developing countries, with the highest proportion in Asia. From 65 per cent to 70 per cent, i.e. the great majority, live in rural areas. 47/

143. The Nairobi Forward-looking Strategies for the Advancement of Women mention women with physical and mental disabilities under the "areas of special concern". Paragraph 296, after identifying the factors that contribute to the rising numbers of disabled persons, states that the recognition of their human dignity and human rights and the full participation by disabled persons in society is still limited. These are additional problems for disabled women who have domestic and other responsibilities. Among the recommendations to Governments are the adoption of the Declaration on the Rights of Disabled Persons and the World Programme of Action, which provide an overall framework for action, especially regarding problems specific to women that have not been fully appreciated by society because they are still not well known or understood.

144. Paragraph 296 concludes by recommending that: "Community-based occupational and social rehabilitation measures, support services to help them with their domestic responsibilities, as well as opportunities for the participation of such women in all aspects of life should be provided. The rights of intellectually disabled women to obtain health information and advice and to consent to or refuse medical treatment should be respected; similarly, the rights of intellectually disabled minors should be respected."

145. Finally, the Special Rapporteur would like to express his disappointment at the virtually total lack of bibliographic material on the specific problem of women with disabilities. It is all the more surprising to find such a lack in women's literature, which is obviously very familiar with discrimination.

E. Specific problems of some other vulnerable groups

1. Refugees

146. The situation of refugees has at least two readily recognizable points of contact with the subject of disability. Firstly, these are persons who have had to leave their country in order to escape from wars, armed conflicts, political persecution and so on: in other words, who in one way or another have experienced violence at close range and who have accordingly run all the risks and encountered all the dangers it involves as a causative factor in disability. Secondly, even when the refugees are already settled in the receiving country, they have in any case, as a rule, to cope with various difficulties which *per se* make them a particularly vulnerable population.

147. The additional obstacles faced by a refugee who is also a disabled person have to be assessed against this background. What is more, in many countries the fact that an applicant for refugee status is disabled is customarily taken as grounds for rejecting his application; everyone will remember with sadness the tragic situation of thousands upon thousands of disabled refugees who have spent years in transit status in Thailand and other countries of South-East Asia awaiting a visa that never arrives, or that arrives only for those refugees who satisfy the conditions of physical and mental wholeness bureaucratically required by immigration laws.

148. Until the establishment of the Trust Fund for Handicapped Refugees (TFHR), set up with funds originating from the Nobel Peace Prize granted to the United Nations High Commissioner for Refugees in 1981 and donated for that purpose, little or nothing was known about the tragic situation of disabled persons in refugee and displaced persons' camps. This noble gesture by UNHCR threw some light on what was happening, although none of the mass media showed any great interest in the matter. It is nevertheless true that the resources allotted to the Trust Fund are used to alleviate the unhappy situation of these refugees. For example, disabled persons in need of special treatment that cannot be provided in the country where they have taken refuge have been moved. A total of 322 persons were moved in the first four years and the number has been increasing since then.

149. There are no detailed figures for the number of refugees suffering from this or that disability, and the piecemeal information at the Special Rapporteur's disposal is not up to date. A few figures can, however, be quoted to illustrate the scale of the problem. According to a UNHCR report, 22 projects concerning disabled persons were in the process of implementation at a total outlay of $983,396 at the end of 1986. These projects were being carried out in Africa, Asia, Europe and Latin America and their combined beneficiaries totalled 10,755. These 22 projects covered 19 countries and were serving twice as many people in 1986 as the year before. Even then Pakistan was the country with the largest number of disabled refugees (3,088 with mental impairments, 4,050 with physical disabilities).

150. The same report states that some 300 handicapped persons, 65 per cent with physical and organic disabilities and the remaining 35 per cent suffering from psychiatric disorders, mental retardation or psychosomatic consequences of torture, arrived in third world countries in 1986. It is also reported

that between 1985 and 1986 the figure increased. Some developed countries have concluded agreements to receive disabled refugees. The Netherlands, for example, informed the Special Rapporteur that it had launched such a policy in 1978 and increased its scope with effect from 1981.

151. Among the causes of disability, apart from the common causes, the report states that refugees are most affected by poverty, poor health and hygiene and inadequate health education. It is stated further that they suffer more than the rest of the population from hereditary physical and mental disabilities, congenital diseases, malnutrition and accidents. UNHCR encourages rehabilitation projects, emphasizing refugee participation. It makes it a practice to subsidize rehabilitation communities, although it provides direct subsidies only in exceptional cases. Its purpose is always to facilitate contact for the disabled refugees with the local associations concerned. Under the heading of special education it also subsidizes programmes and employs teams of instructors, therapists, counsellors, etc. As to employment, it always endeavours to place the refugees concerned in work, either by setting up small businesses or through productive participation, especially in the informal sector of the economy.

152. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reported that it provides education, health care and auxiliary services for disabled persons registered in five areas: Jordan, Lebanon, Syrian Arab Republic and Israeli-occupied territories. Prevention and the rehabilitation of disabled persons are included in UNRWA regular programmes, in collaboration with local and international non-governmental organizations. These measures comprise maternal and child health care, preventive programmes that include immunization, nutrition and supplementary feeding, and health education. Medical services of care, prevention and cure were rendered to a total of 1,845,175 refugees in 1986 and 3.5 million children received health education in 635 schools run by the organization.

2. Indigenous inhabitants

153. At various sessions of the Sub-Commission, non-governmental organizations concerned with protection of the human rights of indigenous populations have reported that the risk of disability among those populations is extremely high because their working conditions are often exhausting and highly dangerous, their level of living is usually lower than that of the rest of the population and the preventive medical services available to them are often of very poor quality. Furthermore, disabled persons belonging to such groups do not usually have access to suitable rehabilitation services or adequate government help. In short, the characteristics making up a vulnerable group which in the case of disabled persons is subject to twofold discrimination were highlighted by almost everyone who spoke on this topic.

154. Settlement, the expansion of extractive industries such as mining and logging, large-scale development projects, such as hydroelectric dams, and so on, are affecting an increasing number of indigenous populations that until very recently depended essentially on hunting and fishing for their livelihood. These activities result in loss of land, the enclosure of hunting grounds and the destruction of wild fauna and flora, making the indigenous communities increasingly dependent on prepared foods containing large quantities of

unwholesome sugars and fats. These, and excessive glucides, greatly increase the incidence of cardiovascular diseases and cancer 48/ and may also be a factor in diabetes. 49/ To sum up, the systematic changes in diet brought about by industrial projects imposed on the population, or by emigration, not merely destroy the indigenous economy but can also enslave the mind.

155. Although they may seem much less obvious than any physical disability, learning disorders are a particular source of danger because they may affect an entire population and even impair its capacity to resist exploitation. Consequently, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries marks a genuine step forward; it recognizes the right of such peoples to take control of their own development, to administer their territories and to require the State to take steps to protect their environment. Special rules are laid down to these ends in articles 4 and 7 and in part II of the Convention. Be that as it may, the Convention has attracted very few ratifications, and indigenous peoples and non-governmental organizations are urging the need for a greater United Nations commitment in this connection. The Conference on Environment and Development which is to be held in Brazil in June 1992 will provide an exceptional opportunity to spell out rights and responsibilities with regard to the environment of indigenous populations.

3. Migrant workers

156. The special situation of migrant workers and their families as groups falling victim to discrimination is a topic which has long been a focus of attention in the United Nations, to the point where, as already stated, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was recently adopted. Over and above the rules laid down in that instrument, the *travaux préparatoires* are very illuminating, for they draw attention to the precarious situation that frequently overtakes persons in this category and the increased discrimination which disabilities often bring with them.

157. At the national level, paradoxically, certain immigration laws have been the means of revealing the discriminatory criteria applied against persons with a disability, since in many cases they were - and, as we shall see later on, still are - denied readmission to the country.

F. Underdevelopment and its various manifestations considered as a violation of human rights

158. Both the Sub-Commission's discussions and most of the replies received emphasize the important role of underdevelopment in the occurrence and intensification of disabilities. 50/ Owing to a vicious circle, mass shortcomings in the area of education, nutrition and health care bring about an increase in the disabled population that cannot contribute to development, thus increasing the public burden on third-world countries. The problem is therefore generally presented as a denial of the right to development as recognized by the United Nations: a right whose fulfilment is considered one of the most effective means of overcoming disabilities and strengthening protection of the human rights of disabled persons.

159. Many of the replies agree in singling out the following among the causative factors of underdevelopment-related disability: indigence, poor food and housing, lack of public hygiene, degradation of the environment, inadequate education and health information, the well-known effect of illiteracy, etc.

160. Unlike the factors making for disability which we have identified at the beginning of this chapter and elsewhere in it - torture, amputation, etc. - the causes we are examining now certainly justify reference to a cause-and-effect relationship between the phenomenon (hunger, malnutrition, etc.) and the resultant disability, but in this case the direct relationship between victim and victimizer apparent in the case of torture, for example, is missing. In essentials, the difference lies firstly in the distinctive nature of the causes of disability (violation of civil rights in the one case and of economic, social or cultural rights in the other) and secondly in the practical difficulties of fixing the blame. It is easier to punish the perpetrators of an inhuman, cruel or degrading act than to identify those responsible for hunger or poverty. There is no doubt, however, that death from starvation constitutes a denial of the right to life and an act of cruelty as blameworthy as torture.

161. Hunger is a scourge that is still ravaging a large proportion of mankind; where it does not lead to the early death of the hungry, it results in a chronic state of malnutrition that slowly reduces people's mental and physical capacity. It has consequently come to be said that hunger is the sickness of slaves, for it affects those who, by their very status, are subjected to the hardest, heaviest and most dangerous kinds of work, with the result that they consume more energy and need to be better fed. According to the table prepared by WHO and referred to above (see para. 110), more than 100 million persons - that is to say, more than 20 per cent of all disabled persons - are suffering from disabilities of various kinds resulting from dietary deficiencies. The replies, in their turn, make it clear that the commonest causes of disability in most parts of the world are prenatal diseases or diseases of early infancy due to malnutrition.

162. The lack of an adequate health system has repeatedly been ranked among the main causes of disability. Not only does it impede the decisive task of prevention, but many avoidable disabilities grow worse or become permanent for lack of attention. Furthermore the lack or inadequacy of medical attention during pregnancy or confinement is, according to UNICEF, one of the most powerful factors in disabilities among children. The non-governmental organizations emphasize that the problems resulting from inadequate health care can be solved only through the establishment of a network of health services where basic care is accessible to all, regardless of economic circumstances or geographical location. Similarly several Governments and non-governmental organizations include insalubrious housing among the causes of many disabilities, since it serves as a breeding-ground for a great many diseases, makes for accidents, leaves its inhabitants exposed to the worst fates in the event of natural disasters, and so on. Lastly, many replies refer to article 8 of the Declaration on the Right to Development, which provides that States should undertake all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

163. The extraordinarily rapid progress of science and technology, proceeding in disregard of nature's laws and nature's capacity for self-cleansing and self-reproduction, has resulted in an alarming deterioration and degradation of our natural environment. Yet only in the last few years has it come to be realized more and more that desertification, 51/ uncontrolled deforestation, soil exhaustion, depletion of the ozone layer, pollution and toxic wastes produce a wide range of adverse effects on human health and are the causes of disabilities of various kinds. Disasters such as the fire at the Chernobyl nuclear power station in the Soviet Union and the accident at the Bhopal chemical plant in India are no more than examples of the tragic effect which contamination and environmental pollution have on health and the generation of disabilities.

164. It should also be remembered that at several sessions of the Sub-Commission growing concern has been expressed about the use of pesticides and feeding-stuffs that contain hormones, antibiotics or other additives and that are still being exported to developing countries even after they have been prohibited in their country of origin as a result of their harmful effects. Furthermore the preliminary report submitted by the Special Rapporteur on "Human rights and the environment" (E/CN.4/Sub.2/1991/8) gives a series of similar examples which clearly illustrate this point.

165. Another of the main causes of disability consists of injuries or diseases caused by working with dangerous substances or under unsuitable conditions. Problems are created in this connection by the transfer of unsuitable, defective or obsolete technology or equipment from developed to developing countries, by excessively long hours of work with inadequate rest breaks, etc. Some participants in the Sub-Commission's sessions have expressed their deep concern at the degree of non-compliance with safety standards in industrial and agricultural work. It has been said that, in countries where those standards had recently been lowered, there had been a striking increase in work-related disabilities. 52/ The effects of dangerous substances often go beyond the actual worker and are felt by his entire family. For example, reports from Bhopal refer to a high incidence of disabled babies, miscarriages and stillbirths due to exposure of the parents to chemicals which, as we know, killed more than 2,000 people and left many thousands permanently disabled.

166. Lastly the Special Rapporteur draws some encouragement from the measures taken by United Nations bodies to prohibit the movement of toxic and dangerous products and wastes to, and their dumping in, other countries and the export of dangerous chemicals or pharmaceuticals. Many disabilities are due to defective baby foods and to the distribution in developing countries of drugs which have been superseded or prohibited in the developed countries owing to their dangerous side-effects. Such acts, whatever they may be called, are genuine violations of human rights and should be treated as such by the international community.

167. A factor which is intimately bound up with disability, and which in some degree combines many of those already examined is indigence: extreme poverty, or "the supreme evil" as it used to be called by Father Joseph Wresinski, the founder of the International Movement ATD Fourth World, which has been doing commendable work on behalf of the poorest for several decades. Indigence, besides being in itself the most palpable expression of social exclusion and

denial of the enjoyment of all human rights, is a direct cause of disability as well as a factor that worsens both disability and discrimination against disabled persons.

168. In a letter addressed to the Special Rapporteur by the non-governmental organization ATD Fourth World it is stated that:

> "Disability in all its forms, being present in all social settings, is nevertheless part of the daily life of families and groups in a situation of extreme poverty, whether in the poorest regions of the world or in poverty-stricken areas of industrialized countries. Indeed, disability is so intimately bound up with poverty that it is difficult to isolate as a problem. Is it a cause of poverty? Is it a result? The greater the poverty, the greater the risks of disability become. Through their living conditions, working conditions, state of health, ignorance and so on, the poorest are especially exposed to the onset of various disabilities, not merely at birth and in infancy but at every stage in life. As a result, infirmities and handicaps accumulate in the course of a single person's or a single group's life. This is illustrated by various statistics, for example those indicating the increased risk of disability incurred by certain categories of workers in the most dangerous and unhealthiest sectors. Similarly the leprosy map of Africa covers much the same territory as the hunger map. While the correlation between extreme poverty and disability is very widely acknowledged in the case of the developing countries, it is less clearly perceived with reference to the poorest milieux in the industrialized countries."

169. The organization goes on to state that:

> "Indigence worsens the consequences of disability and leads to situations of multiple discrimination. The consequences of disability are more serious, longer-lasting and harder to bear for the poorest and their families, while entire groups are weakened by the fact that a large number of their members are afflicted in this way. This is especially true in that the means of overcoming the difficulties of living with certain physical or mental deficiencies - the prevention, re-education and vocational training services - are largely lacking in the most underprivileged ranks of society. Thus one and the same disability or infirmity may have very different consequences according to the victim's socio-economic status and level of training. For example, a lawyer who has partly lost the use of one leg will be able to keep his practice, whereas an unskilled agricultural labourer may well be left with no source of livelihood. Furthermore, the low level or even complete absence of education in the poorest circles virtually rules out access to the resources of vocational retraining, all the more so since those resources are rarely designed with the situation of the poorest in mind. In the industrialized countries there is a tendency for children, young people and adults in a situation of extreme poverty to be hedged about with administrative rules on disability that allow no scope for promotion, training or integration in society."

G. Apartheid

170. There are two main reasons why it is relevant to include apartheid in this study: firstly, the prevailing system in South Africa is the cause of many disabilities among the majority black population of the country; and, secondly, disabled persons who belong to that majority are in turn victims of a twofold discrimination. The living conditions of the vast majority of the coloured population, especially in Soweto and the bantustans, are characterized by a lack of drinking water and of adequate sewerage. Moreover, malnutrition and generally poor sanitation mean that the number of disabled persons is very high in this community. Furthermore, the constant oppression and permanent violence practised by the white minority against the coloured population significantly increase the number of disabled persons.

171. In connection with this twofold discrimination, Disabled Peoples' International (DPI) reported to the Commission on Human Rights an incident which received much publicity at the time and which provides a particularly graphic example of such an aberration. It concerned a group of foreigners who were visiting South Africa and were involved in a car accident. All the members of the group received immediate medical care except for one, who was black and was denied medical care by the emergency services, as a result of which he will be quadriplegic for the rest of his life. The DPI stated that this incident illustrates the relationship between apartheid and disability and expressed its distress at the fact that this is happening daily to the majority population in the country and only came to light in this case because the victim was a foreigner.

172. According to a WHO report, the tension that apartheid creates in the black population is affecting mental health. It gives as an example the massive forced expulsions which have been ordered to achieve the bantustanization of some unpopulated areas of the country in order to perpetuate white economic and political supremacy through the creation of a mobile group of migrant labourers with wretched living conditions. Furthermore, the situation of coloured people with mental disabilities is extremely serious and goes so far as to include their employment as free labour by private enterprise with the agreement of the Government. Although the Special Rapporteur lacks recent information, until a few years ago there was not a single black psychiatrist in the whole of South Africa, and vital decisions concerning thousands of African mental patients were taken by doctors working part-time who, in addition to having been trained in another culture with racist characteristics, did not even speak the language of their patients. The availability of beds for psychiatric care per 1,000 inhabitants of the white population is 3.3 times greater than for the black population.

173. While considerable progress has recently been made in South Africa in the field of human rights, and particularly in the legal abolition of apartheid, the Special Rapporteur believes that the situation is still far from satisfactory and for this reason has preferred to fulfil his mandate by highlighting aspects linking disability with apartheid, as he was asked to do by the Sub-Commission.

H. Problems related to some deliberately inflicted forms of punishment and other treatment

174. On various occasions in the Sub-Commission, representatives of non-governmental organizations for disabled persons and other participants have joined in identifying the following practices as serious violations of international law and human rights: 53/ amputation as punishment; the institutionalization of disabled persons; institutional abuse, including the use of drugs; forced sterilization, castration and female circumcision; and the blinding of detainees as an alternative to detention. Many speakers have emphasized that no religious value or other cultural factor could justify or excuse such acts, which they regard as being contrary to binding human rights standards prohibiting torture and other cruel, inhuman or degrading treatment or punishment.

175. Mutilations, particularly the amputation of the extremities of captured combatants in time of armed conflict, have been condemned as an aberrant practice, common in some regions, which is contrary to the Geneva Conventions and human rights standards. Several non-governmental organizations have pointed out that forced sterilization is more often used on disabled women than men in order to prevent them from having children. Often, disabled women are sterilized for eugenic reasons or simply because they are often victims of rape. Indeed, sterilization is sometimes a prerequisite for entry into an institution. 54/

176. For many years the Sub-Commission has been closely studying traditional practices, for example sexual mutilation, which affect human rights, as well as ways of eradicating those which harm families and the community, and of encouraging practices that are beneficial. 55/ In that regard, particular attention should be paid to relevant aspects of the report submitted on the subject by the Special Rapporteur, Mrs. Halima Warzazi (E/CN.4/Sub.2/1991/6).

177. Finally, among the institutional abuses of which disabled persons are often victims, as well as maltreatment, the administration of drugs and other aspects which will be looked at in chapter III, the use of psychiatry for political ends and the improper detention in psychiatric hospitals of political opponents or disabled persons when it is not needed or not advisable, have been condemned.

178. In conclusion, the Special Rapporteur would like to reaffirm his belief, already expressed in his preliminary report, 56/ that certain punishments, such as amputation, which are deliberately intended to disable the individual, are contrary to international humanitarian law. A correct interpretation of article 4 of the International Covenant on Civil and Political Rights - and, in the same context, articles 15 and 27 of the European Convention on Human Rights and the American Convention on Human Rights, respectively - allows us to conclude that cruel, inhuman or degrading treatment or punishment is prohibited at all times and in all circumstances and that no emergency situation can authorize them. Any penalty, whether based on principles that are legal or religious or both, which entails cruel or inhuman punishment or treatment is a violation of human rights in the light of the international norms in force.

I. Scientific experiments

179. Without question some of the most serious human rights violations that cause disability are scientific experiments conducted without the victims' informed consent. Such acts are prohibited particularly by the Geneva Conventions and article 7 of the International Covenant on Civil and Political Rights. Earlier they formed the subject of important decisions by the allied military tribunals set up to punish Second World War criminals on the basis of the Charter and the Judgement of the Nuremberg Tribunal. 57/ At the moment the transplant of children's organs is one the most sensitive of a great many complex problems. According to a WHO report there has always been a shortage of organs available for transplants and for this reason many countries have established procedures intended to increase supply. Nevertheless there is sufficient evidence to indicate an increase in the commercial traffic in human organs, particularly from living donors who are unrelated to the recipients. There are grounds for fearing that as a result there could exist a traffic in human beings of which children, as always, are the main victims. 58/

180. It is felt that these problems call for further in-depth study of an ethical and normative nature, particularly in view of recent genetic and biological developments. The Special Rapporteur considers that such an analysis, which is extremely necessary, should take the form of a separate study because of the highly complex technical problems involved. Cooperation with WHO and various bioethical and life sciences associations would be desirable for such an undertaking.

III. PREJUDICES AND DISCRIMINATION AGAINST DISABLED PERSONS: AREAS, FORM AND SCOPE

A. Introduction

181. This chapter, perhaps more than any other, should highlight the relationship between the goals of "full participation" by disabled persons and the strategies for guaranteeing the "equality" of opportunity and treatment, as well as the link between both these aims and one of the most cherished goals of organizations of disabled persons, namely, to ensure the maximum degree of autonomy and independence for the disabled. This means developing the capacities of the individual to the full, rather than adopting the traditional approach of emphasizing disabilities or handicaps to classify individuals, since these tend to be the direct or aggravated result of the attitude of the community itself towards persons who suffer from some real or apparent 59/ physical or mental disorder or functional problem.

182. Clearly, the disabilities of a person who has not received proper rehabilitation treatment will grow worse and, in some cases, become acute. If he is discriminated against in the work place because of his disability or he is simply afforded no employment opportunity, his dependence and his isolation will be greater. If the educational system does not provide for his specific situation, a disabled person finds himself excluded from it, and without proper instruction his disabilities worsen. If the cultural and sporting activities of society are designed solely for a standard category of person which does not include him, he will be barred from culture and sport. If means of transport, pavements and buildings are inaccessible to such a person, he will be unable to move about freely. In short, it is such barriers and discrimination which to a large extent create or aggravate disabilities and actually set people apart from society, in many cases making them a burden to the community. This demonstrates conclusively the importance of efforts to achieve the maximum degree of autonomy and independence for disabled persons, not only for their benefit, but also for the benefit of society as a whole.

183. Mr. Bengt Lindquist, Swedish Minister for Family Affairs and Matters concerning the Disabled and the Elderly, told a group of specialists 60/ that "The ideas and concepts of equality and full participation for persons with disabilities have been developed very far on paper, but not in reality. In all our countries, in all types of living conditions, the consequences of disability interfere in the lives of disabled persons to a degree which is not at all acceptable. Many of the existing obstacles and limitations occur in areas of fundamental importance to our situation as citizens of our societies. If a person in a wheelchair wants to attend a public meeting, be it social, cultural or political, and if he cannot get into the meeting room because the building is not accessible, his rights as a citizen have been violated. A blind person interested in a public debate who has no access to the daily paper in which the discussion takes place is in a similar situation. When a person is excluded from employment because of the fact that he is disabled, he is being discriminated against as a human being. If a general education system is developed in a developing country and disabled children are excluded, their rights are being violated".

B. Areas and scope of discrimination

184. Among the information provided by non-governmental organizations was a document prepared by the World Veterans Federation listing the areas or spheres in which disabled persons find themselves at a distinct disadvantage. They are:

(a) Education. In all countries, educational institutions are not always accessible to disabled persons and in many cases such persons are not admitted to the same schools as other people. The same applies to vocational training and to academic studies;

(b) Employment. In addition to the fact that many work places are not physically accessible to severely disabled persons, employers often fail to understand that a physical disability does not necessarily involve mental impairment and even fellow workers themselves may be opposed to the employment of disabled persons;

(c) Transport. Attention is drawn to the highly discriminatory effect of the failure to provide accessible means of transport and the obstacle which that presents to an independent life for disabled persons;

(d) Housing. It is noted with astonishment that even now, in highly developed countries, buildings which are not accessible to disabled persons are still being constructed. The use of wheelchairs, for instance, is extremely difficult, or even impossible, in many apartment buildings;

(e) Buildings in general. The above observations also apply to other premises such as public office buildings, restaurants, cinemas, theatres, libraries, hotels, sports facilities, etc. Apart from the obstacles presented by building design, prejudices often exist which render the access of disabled persons to premises such as restaurants or bars difficult or impossible. It is common to hear the management of such establishments say that there are no tables free when a group of disabled persons attempts to enter.

C. Cultural barriers

185. Although in most of the replies it is recognized, at least implicitly, that prejudices and discrimination against disabled persons exist, few Governments have made a study of the causes and forms of such practices. However, with regard to causes, some replies were objective enough to single out traditional attitudes which expose some categories of disabled persons to feelings of shame, superstitious fear and rejection. 61/ It is worth noting that both governmental and non-governmental sources point to cultural barriers as one of the main obstacles to the integration and full participation of disabled persons in all aspects of social life.

1. Access to education

186. Further to the information provided by the World Veterans Federation, the Special Rapporteur considers it worthwhile emphasizing the impact of such cultural barriers on all aspects of the economic, working, educational and

everyday life of disabled persons. With regard to education, for example, paragraph 120 of the World Programme of Action stipulates that education should, as far as possible, be provided within the ordinary school system, without any discrimination against handicapped children or adults. However, this condition is not always met, because of the prejudices of the authorities and teachers, of the parents of other children, or even of the parents of disabled children. Consequently, in many instances where the child's disability does not constitute an obstacle in itself, discrimination prevents him from entering the ordinary school system. In some cases, it is the law itself which stipulates that disabled children must attend special schools, which is tantamount to official segregation. In other cases, the obstacle to school attendance is the lack of means of transport, both in cities and in rural areas, although the phenomenon is much more common in the latter. Shortcomings in building design have a similar effect, making access to school buildings and movement inside them difficult, and also barring access to toilets etc., a very common phenomenon.

2. Unemployment

187. From the reports received, it emerges that unemployment is one of the main problems of disabled persons. According to ILO, the level of unemployment among disabled persons is two or three times as high as for other persons, and in many developing countries where unemployment is very widespread, the employment prospects of disabled persons are minimal or non-existent. For example, the unemployment figures for Europe are as follows: in the United Kingdom, the estimated level of unemployment amongst disabled persons in 1978 was 14 per cent, compared with 5.5 per cent for the rest of the population; in France in the same year, the unemployment rate amongst disabled persons was three times as high as for the rest of the population; the Netherlands and Denmark had unemployment rates of 7 per cent in 1978, and only 11.5 per cent and 17.5 per cent respectively of their registered workers with disabilities were able to find work; in the Federal Republic of Germany, the average period of unemployment for workers with disabilities is 16 months, compared with 10 months for the rest of the population. 62/ Although these figures are 10 years old, they provide a clear indication of the comparative levels of unemployment among disabled persons and for the rest of the population.

188. Still with regard to the major problem of unemployment, Finland, which is a developed country and highly advanced with regard to the treatment of disabled persons, recognizes in its official report that, while a special employment service does exist and employers receive subsidies for employing disabled persons, their conditions continue to deteriorate in relation to the general rise in unemployment. The official report of Canada states that, despite the fact that the law prohibits discrimination against disabled persons, many cases of unequal treatment on the labour market have been discovered and the unemployment rate is estimated at more than 50 per cent. The Australian authorities state that there is some labour discrimination against disabled persons in regard to equal opportunities to acquire skills and training, equal employment opportunities, equality in working conditions and career advancement. They also state that many disabled persons live below the poverty line.

189. In the developing countries, the extremely high percentage of unemployed disabled persons means that they are forced to resort to begging in order to survive or that the favoured few who obtain jobs are forced to accept very low levels of pay. Moreover, in some countries, employers compel disabled persons to refrain from joining unions if they want a job. The World Federation of the Deaf notes that, in addition to the lack of technical assistance and necessary interpretation services, prejudices in general are one of the main factors making it difficult or impossible for persons with hearing disabilities to become fully integrated into the labour market.

3. Private life

190. The examples provided by governmental and non-governmental sources on the negative effect of prejudices on the daily lives of disabled persons are many and varied. With regard to marriage, the Government of China provides an authentic illustration of the special situation that can arise when a disabled young man and an able-bodied girl have a love affair. While there is nothing abnormal or reproachable in such a situation, it is commonly disapproved of by both sets of parents, friends and relatives. In such circumstances, it is easy to imagine the marriage ending in separation or divorce. In this as in many other similar cases, it is not only the disorder or functional disability that generally prevents integration or lasting marriage, but the behaviour of society towards disabled persons (other examples can be found in paras. 197 and 198).

4. Legal barriers

191. As stated earlier, because of the special situation of disabled persons, a number of "positive actions" must be taken to ensure that they are genuinely able to enjoy their most fundamental rights on a basis of equality. Nevertheless, many non-governmental organizations have informed the Special Rapporteur of failures to meet this requirement. In some countries, for example, deaf and dumb persons are deprived of the right to a defence because the judicial and investigating authorities do not have permanent interpreters, which are essential in such cases.

192. At the other extreme, there are also fairly numerous complaints from non-governmental sources concerning what might be termed "negative actions" resulting in the legal exclusion of disabled persons from many acts of daily life. In many countries, even today, deaf and dumb persons who are unable to express themselves in writing are considered legally incapacitated, although other effective means of communication, such as sign language, already exist or have been developed. Another similar example is the barring of blind persons from acting as guardians, when they are actually perfectly able to act as parents, and thus also as guardians. Finally, the Pan-American Congress of the Blind reports that, in some Latin American countries, sightless persons are not permitted to vote or stand for election, on the grounds that it is difficult for them to vote responsibly or preserve secrecy.

D. Particularly vulnerable situation of the mentally ill

193. However, it is in the sphere of mental disability that these legal barriers are most in evidence. There is general agreement that persons with

mental disabilities are among the groups most discriminated against and the special report prepared by Mrs. Erica-Irene Daes entitled "Principles, guidelines and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder" fully confirms this view. 63/

194. According to information received from the International League of Societies for Persons with Mental Handicap, a meeting of lawyers representing various associations held at Marburg, Germany, in June 1989, reached the following conclusions:

(a) In everyday life, mentally handicapped persons are not treated equally with their neighbours, colleagues, etc. In addition to being frequently refused entry to bars, restaurants, swimming pools, discotheques, etc., they are often not allowed into hotels and regularly face enormous difficulties in finding accommodation, even in apartments, particularly when they are in groups;

(b) In the legal sphere, for example, many instances of discrimination can be found in immigration laws. Many national laws prevent mentally handicapped persons from entering the country, not only as permanent residents, but even as tourists, for a limited period of time. Attention is drawn to the fact that it is in the most developed Western countries (Canada, France, Switzerland, United States) that this type of restrictive legislation is most frequently applied on the grounds, in many cases, that the presence of mentally handicapped persons from abroad will impose "excessive demands on health or social services"; 64/

(c) It is also regrettable that, in some countries, mentally handicapped children are denied the opportunity to develop and learn, although there is abundant evidence to show that even seriously mentally handicapped persons can acquire and improve practical skills and attain a high level of proficiency in manual work;

(d) The worst form of discrimination against the mentally handicapped is the campaign to legalize the termination of life of severely handicapped new-born children;

(e) Finally, attention is drawn to the deplorable treatment to which mentally handicapped persons are frequently subjected in psychiatric hospitals, a question which is dealt with specifically below.

E. Institutionalization

195. In this connection, it should be recalled that the Sub-Commission's Special Rapporteur, Mrs. Erica-Irene Daes, in her report relating specifically to persons detained on grounds of mental ill-health or suffering from mental disorder, showed that some persons had been subjected to privation in psychiatric institutions, as well as to many other forms of psychiatric mistreatment and misuses of psychiatry, including even torture by drugs, in contravention of medical ethics and of the relevant international instruments. 65/

196. As this is a question which has been duly considered in the above-mentioned report and in the various discussions in the Working Group on the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, we shall refer only briefly here to the acute problem of the abuses and problems which regularly arise from the internment of the mentally ill in psychiatric institutions. However, this reference, although brief, is justified, since the next chapter will deal with the various alternatives to institutionalization. The Special Rapporteur is aware of the importance of bringing fully to light the tragic situation obtaining in some psychiatric establishments and of the many and profound after-effects of confinement in them, so as to finally bring about a change of policy in this area.

197. It is an established fact that, while only a small minority of disabled persons are institutionalized, such confinement is ultimately one of the most severe and common forms of exclusion of such persons. Many facilities, by virtue of being located in unpopulated rural areas, are physically remote from the community, which only serves to increase this exclusion. Life within them bears little or no relation to the life of the community at large, or even that of other disabled persons living outside. In institutions, freedom to associate is usually limited by segregation of the sexes. It is very common for inmates to have their mail opened and be denied other means of communication with the outside world. They are generally prevented from marrying and having children and, in some cases, even from voting. Internment also tends to lead to excessive use of drugs and other forms of behaviour control. Even the most modern, well-equipped and well-staffed institutions have a somewhat dehumanizing character since institutionalization is based on the assumption that the persons concerned are incapable of leading an independent life as members of the community, so that inmates tend to become passive and dependent. The very fact that they are segregated from society promotes this tendency and causes inmates to develop what has been called an "institutional mentality", itself a further disability in that it impedes their reintegration into the community.

198. In addition to horrible misuses of psychiatry of the kind frequently reported in the media, particularly when they have resulted in the death of an inmate, the ordinary routine of institutions can give rise to appalling situations which are usually unknown or inconceivable to anyone who has never visited an establishment of this type. For example, non-governmental organizations report that one typical aspect of life within institutions is the virtually total loss of privacy for inmates. They usually have to share their accommodation with one or more other persons, which in itself results in a complete lack of privacy. Moreover, visitors are received in communal areas, thus precluding any natural display of affection which is so necessary for such persons when they meet their loved ones. It is also not unusual for visits to become less frequent and less regular, particularly if the institution is far from the city. However modern and efficient the institution, the inmates will tend to lose any real concept of the outside world, their only contact with it being through television, or the visits of relatives or friends, if any. Even in developed countries, persons in institutions have been known to spend years, and sometimes the rest of their lives, without anyone claiming them, despite their being equipped to live as members of the community.

199. It may seem surprising, but some developing countries point out that, in present circumstances, extreme poverty, overpopulation and insanitary conditions as regards the family and the local environment prevent the authorities from adopting any approach other than committing disabled persons to institutions. In Thailand, for example, chronic patients who remain in hospital for more than five years usually occupy more than 30 per cent of hospital beds. Although in 1986 a mobile treatment programme was introduced, 22 per cent of chronic psychiatric patients continue to be confined in institutions. Despite this policy of treatment outside institutions, most mental health services continue to be overextended and patients do not participate actively in seeking solutions.

F. Elimination of abuses and of acts of discrimination

200. The existence of effective remedies to prevent this type of abuse (habeas corpus, for example) and the introduction of laws penalizing discrimination is a question of the utmost importance which will be dealt with fully at the end of the following chapter. For the moment, it is worth noting that this is a question which is widely discussed in non-governmental circles but which, with a few exceptions, Governments have been very slow to take up.

201. One such exception is the United States Rehabilitation Act of 1973, section 504 of which provides that "No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any programme or activity receiving Federal financial assistance". Another similar example is the Anti-Discrimination Act of New South Wales, Australia, which makes it unlawful to discriminate against an intellectually handicapped person on the basis of her or his intellectual impairment in six important areas of social life, namely, work, accommodation, public education, provision of goods and services, membership of trade unions and membership of clubs. In 1988, Argentina adopted Act No. 23,592 under which various forms of discrimination, including those directed specifically against disabled persons, were made punishable offences. Sweden is currently preparing an anti-discrimination law and it has been agreed that an ombudsman will be appointed to supervise its implementation.

202. The Special Rapporteur shares the view that anti-discrimination legislation, particularly when it refers specifically to disabled persons, is an appropriate way of combating certain reprehensible attitudes, particularly in so far as it affords the possibility of suing owners of bars, hotels and other public premises who have practised discrimination and to bring claims against national or local authorities whose officials have been guilty of discrimination. The Special Rapporteur nevertheless considers public information and education campaigns conducted by the public authorities, trade unions and organizations of disabled persons to be of vital importance in eradicating prejudices which continue to exist and in putting an end to discrimination.

203. Another decisive step in combating discrimination would be a systematic review of national laws and the incorporation in them of the principles and guidelines contained in the various international instruments which prohibit, with increasing specificity, any form of discrimination against disabled

persons. An example of this is the application clause of the Principles for the Protection of Persons with Mental Illness, which states: "These Principles shall be applied without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion ..." (author's underlining). More recently, General Assembly resolution 45/113 entitled "United Nations Rules for the Protection of Juveniles Deprived of Their Liberty", contains in paragraph 4 of its annex, the following statement: "The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability ..." (author's underlining).

IV. NATIONAL AND INTERNATIONAL POLICIES AND MEASURES DESIGNED TO ERADICATE DISCRIMINATORY PRACTICES AND GUARANTEE THE DISABLED THE FULL ENJOYMENT OF HUMAN RIGHTS

A. Preliminary considerations

204. It seems appropriate to point out at the outset of this chapter that its content accords in essentials with the aims and strategies of the World Programme of Action, whose implementation, within the United Nations system, is the responsibility of the Centre for Social Development and Humanitarian Affairs, which has in this regard performed commendable and noteworthy work. We would therefore like to refer to the Centre's many documents and publications, 66/ which give a comprehensive and detailed account of its numerous activities and efforts on the subject. In this context, the Special Rapporteur will confine himself to a bare summary of the information received, stressing only those issues which he feels essential in achieving the Programme's objectives.

205. Possibly one of the most striking aspects is the realization of the joint responsibility of governments, the community and disabled persons themselves for achieving these aims. In this context, there is no doubt that one of the most notable features of the Decade has been the leading role played by non-governmental organizations headed by disabled people, and the acknowledgement of their status as experts in their own affairs. At the social level, there has also been an extremely positive development as increasing importance is attached to the integration of disabled persons in the community. This has been suitably reflected in the conceptual transformation of rehabilitation, which has lost its strictly medical character and incorporated the social dimension previously lacking. Nevertheless, more than a few Governments, on the broad pretext of "economic crisis", have sent replies that often present a picture of a "hands off" State which believes itself exempt from any social function as a result of the prevailing economic situation.

206. It is therefore important to point out in this introduction that, while joint responsibility may be the dominant concept behind the World Programme of Action, the principal obligation to remove obstacles impeding or hindering the integration and full participation of disabled persons lies with Governments. This means that they cannot be mere onlookers; they must act, sometimes with great vigour, and especially in difficult situations, in order to prevent marginalization and to ensure that equalization of opportunities is not just rhetoric but real and effective.

B. Committal to an institution or rehabilitation in the community

207. Experience has shown that therapy which involves the isolation of disabled persons not only prevents their full integration into their social milieu but in most cases aggravates existing disabilities or causes new ones. This is because rehabilitation is not a purely medical concept but a comprehensive process which covers the physical, mental, social and vocational rehabilitation of the individual. This statement in turn has numerous implications. On the one hand, it means that it is only within the community that a process of rehabilitation which aims to achieve the maximum

participation of the individual can take place, and on the other hand that the individual must participate in the formulation, choice and evaluation of his or her own rehabilitation process. This last assertion might seem elementary and possibly superfluous, unless we remember that for centuries and even now this possibility has been regularly denied to persons with mental disabilities.

208. The World Programme of Action concerning Disabled Persons specifically mentions the growing tendency to integrate rehabilitation services into general public services. It is clearly indicated that this must take place in a natural environment and be supported by mechanisms based in the community itself and in specialized institutions. Furthermore, at the mid-point of the Decade, it was once more stressed that, wherever possible, services for disabled persons must be provided within the existing social, educational, health and labour structures in society and that procedures should be established to permit the effective participation of disabled persons in the decision-making process.

209. Subsequently, at the sixth annual inter-agency meeting on the United Nations Decade of Disabled Persons (Vienna, 5-7 December 1988) the World Health Organization representative 67/ pointed out that developing countries had an unfortunate shortage of specialists in every aspect of community-level services. Only 25 per cent of disabled persons were actively involved in rehabilitation programmes and in most developing countries the potential demand for rehabilitation services was far greater than could be met in the near future. It was also pointed out that rehabilitation activities should meet the care needs of all disabled persons, including those with locomotive, visual, hearing and mental disabilities.

210. At the same meeting, the representative of the International Labour Organisation 68/ said that more needed to be done to integrate disabled persons in the community and that assistance should be offered to them where they lived. Indeed the comments made by this representative are of great importance in that they stressed the need for a critical evaluation of the various approaches taken and results achieved until now with the aim of improving the system and obtaining better results in rehabilitation in the community. The paper submitted by the ILO recommended that the term "community-based rehabilitation" should be changed to "community-integration programme" whenever a rehabilitation agency was setting up programmes geared to equalization of opportunities in training and employment and the socio-economic integration of disabled persons. It further emphasized that as local conditions were very varied there was no single global approach to organizing community-based rehabilitation.

211. The Food and Agriculture Organization of the United Nations, 69/ for its part, reported that it had not specifically worked on the reintegration of blind or partially sighted persons into society (Onchocerciasis Control Programme in Senegal, Mali and Guinea), as they had never been excluded but were simply a burden on the society which supported them. With the improvement in their physical condition the "reintegration" occurred quite naturally, whether the community remained in its old area or moved to the new onchocerciasis-freed areas.

212. At the International Meeting on Human Resources in the Field of Disability, which took place in Tallinn, Estonian Soviet Socialist Republic, from 14 to 22 August 1989, 70/ it was pointed out that "the abilities of disabled persons and their families should be strengthened through community-based supplementary services provided by Governments and non-governmental organizations ... . These services should promote self-determination and enable disabled persons to participate in the development of society." Many speakers considered that, while community-based rehabilitation was an approach best suited to rural areas, it was also appropriate for urban areas due to the severe deprivation experienced in them by disabled persons. It was agreed that the involvement of the family and the community was essential to such rehabilitation. Lastly, the importance of this approach was emphasized because even now disabled persons continue to be deprived of opportunities to develop their potential, their productive capabilities and their self-reliance and are thus cut off from the mainstream of national development.

213. At the seventh annual inter-agency meeting, which took place in Vienna from 6 to 8 December 1989, 71/ it was acknowledged that the concept of community-based rehabilitation had received considerable attention over the past Decade and that it was extremely important to utilize and build on existing resources in disabled persons themselves, their families and their communities. The World Programme of Action was seen as the guiding principle in the evolution of this concept and the participants recognized the need for a further clarification of the concept of community-based rehabilitation as a multidisciplinary and intersectoral approach. Lastly, it was pointed out that the preparatory work on the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care had adopted this approach. Principle 3 states that "Every person with a mental illness shall have the right to live, as far as possible, in the community", 72/ and principle 7 that "Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives". 73/

C. Measures taken to limit committal to institutions and to prevent abuses

214. An integrationist trend can also be discerned at the national level, at least judging by Government replies. Most Governments are clearly turning away from committal to institutions as a priority strategy. The stress is now on reintegration into the family and the community with a view to encouraging the maximum integration of disabled persons in social life. However, institutionalization is still a last resort in situations provided for under the law which appear to be of extreme seriousness, for example when an individual suffering from serious mental illness is found guilty of a crime 74/ or when medical and social reports indicate that the minimum welfare of the individual cannot be guaranteed outside of an institution. 75/ In some replies abuses arising from committal, such as sterilization or castration, were mentioned, in particular concerning persons with mental disabilities, and the replies indicated the intention to eliminate these abuses.

215. In order to prevent the institutional abuses often suffered by disabled persons, especially those with mental illnesses, some States have set up supervisory committees, or other relevant bodies, and have established

standards to regulate admission to and retention in mental health-care services. For instance, the Mental Health Act of Alberta, Canada, protects the right of patients to be informed of the reason for admission or to be issued with certificates for renewal of detention. Throughout the committal period, the patients have the right to apply to a review panel for cancellation of the admission certificate or renewal certificate. The Act also protects the confidentiality of a patient's diagnosis and records and prohibits any disclosure that would be detrimental to the patient's personal interest, reputation or privacy. 76/ Another set of national regulations worthy of mention is the Mental Health Act 1959 of the United Kingdom, which provides for the detention in psychiatric hospitals of mentally disordered patients. However, the compendium of national legislation contained in annex III to the report of Mrs. Erica-Irene Daes is sufficiently illustrative and comprehensive on this subject, and the reader is therefore referred to it.

216. Going beyond legal remedies, which are in any case inadequate, non-governmental organizations emphasize the need for genuine alternatives to allow disabled persons to integrate in society. The lack of community-based services is what often leads to disabled persons being confined to institutions. They have the right to normalize their lives through the provision of "alternative residential options" which do not impose restrictions on their freedom and enable them to integrate. These options include the possibility of allocating housing for the rehabilitation of persons recently discharged from institutions, and also apartments in cooperative or public housing specially adapted for them. If they are able to live with their families or on their own, there should be community services enabling them to live independently.

217. Certain of the support services offered by some European Governments to disabled persons living in their own homes show the way ahead in this field. These include, for instance, domestic and personal care arrangements which cover cooking, cleaning, laundry, ironing, personal hygiene, vocational and cultural activities, substitution of direct relative, psychological care, etc. In some cases these services are provided by the municipality and include occupational therapy, social workers, home helps and occasionally small grants to adapt accommodation or to buy electronic aids affording greater independence in the home.

218. Without denying the need to increase the economic aid given for such services, the non-governmental organizations maintain that, where public resources are in short supply, it is particularly important to mobilize the resources of the community and of disabled persons themselves. Especially in developing countries, primary health-care services must be used as much as possible for prevention and medical rehabilitation, the generation of local technical assistance, and the establishment of integrated schools. Furthermore, disabled persons' cooperatives should be encouraged and opportunities for self-employment should be created.

219. The non-governmental organizations have expressed scepticism concerning the effectiveness until now of the scarce legal resources to prevent institutional abuse, and indicated, as we shall see, that they need to be strengthened. Neither have they concealed their belief that the many cultural

factors which lead individuals casually to abandon their close relatives in such places have also influenced the unscrupulous management of some institutions and the abuses regularly committed in them.

220. Finally, there is no common terminology in existence among the organizations to describe the exceptional cases in which committal is advisable. Some of them use the phrase "only as a last resort" or "in those cases in which there is no really valid alternative"; some, on the other hand, apply the criterion "where other methods of treatment have clearly failed". 77/ However, it is indisputable that in those few cases in which committal is accepted it does not lose its restrictive nature and whatever formulation is used should always take into account "that the society has done everything in its power in order to avoid it". This is very important as it translates into words that are not only moral but legal, society's obligation to adjust to the needs of disabled persons. It is far more logical and just that society should adapt to the basic needs of disabled persons than that they should be required not only to overcome the objective impediments arising from their disability but also to adapt themselves to society's foolish excesses.

D. Measures to facilitate the establishment and activities of associations of disabled persons

221. It should be recalled that the Plan of Action for the International Year of Disabled Persons (1981) urged the establishment of national committees to plan, coordinate and execute the activities of the Year. Although some countries had already established similar committees during the 1960s and 1970s, the great majority of Governments only set them up in response to this request. This is evidenced by the fact that during the International Year it was reported that national committees existed in 141 countries and territories. However, it seems that by the end of the year most of the national committees had been dissolved. 78/

222. The World Programme of Action, after pointing out the obligation of Governments to establish a focal point to look into and follow the activities of various ministries, other government agencies and non-governmental organizations, stated under the heading "Participation of disabled persons in decision-making" that Member States should increase their assistance to organizations of disabled persons and help them organize and coordinate the representation of the interests and concerns of disabled persons. It also said that Member States should actively seek out and encourage in every possible way - including through financial support - the development of organizations composed of, or representing, disabled persons. It further recognized the importance of such organizations influencing government policies and decisions in all areas that concerned them. This means that the Programme of Action acknowledges that non-governmental organizations composed of disabled persons or representing their interests have one of the most important roles to play in implementing the Plan and achieving the objectives of the Decade.

223. The leading role achieved by these organizations is perhaps one of the most striking features of the Decade and the positive impact of their activities has yet to be adequately appreciated. What appears to be an issue

at the present time is not the indisputable legitimacy of these associations' activities but rather the broadening of the legal base enabling disabled persons to participate as citizens with full rights in the decision-making process at all levels of the planning, implementation, monitoring and evaluation of policies and programmes. This was one of the main concerns of the Tallinn meeting and some of the guidelines formulated there are aimed at encouraging grass-roots initiatives. For instance, articles 14 and 16 contain the following provisions:

- Local community initiatives should be especially promoted. Disabled persons and their families should be encouraged to form grass-roots organizations, with governmental recognition of their importance and governmental support in the form of financing and training;
- Governmental and non-governmental organizations concerned with disability issues should allow disabled persons to participate as equal partners;
- The efficient functioning of governmental and non-governmental organizations concerned with disability calls for training in organizational and management skills.

224. At the Global Meeting of Experts held in Stockholm in August 1987, the participants agreed on the importance of encouraging non-governmental organizations, especially as they often act as a vehicle for self-development and at the same time can effectively influence certain decisions made by Governments and other sectors of society. More recently, the International Meeting on the Roles and Functions of National Coordinating Committees on Disability in Developing Countries (Beijing, China, 5-11 November 1990) adopted Guidelines for the Establishment and Development of National Coordinating Committees on Disability. Among the goals of those committees are those aimed at developing national policy and legislation on disability and related issues and at inspiring effective measures for the prevention of disability, for rehabilitation and for the realization of goals of "full participation" of persons with disability in social life and development. Furthermore, on 20 February 1991, the Social Committee of the Economic and Social Council adopted a draft resolution urging the establishment and strengthening of national coordinating committees and similar bodies on disability. For this reason the Secretary-General was requested to distribute as widely as possible, with copies in Braille, the Guidelines adopted in Beijing.

225. The idea has gradually taken shape that if disabled persons have equal rights they should also have equal obligations, and that is why their involvement in the building of society is both a "right" and a "duty". This concept has given a new impulse and direction to the work of the relevant organizations, which do not confine themselves to merely defending rights but have also undertaken other activities such as promotion of equality of opportunity through the provision of certain services, for example leadership training, vocational training, the encouragement of job-creation schemes, etc. In Argentina, "PAR", which is an organization made up of disabled persons, has done much valuable work in finding employment. Disabled Peoples' International is sponsoring self-help movements through regional seminars,

congresses and its own newspaper. The World Blind Union not only sponsors conventions of the blind but also helps them to create their own national organizations. The League of the Red Cross and the Red Crescent Societies has adopted first-aid training for the disabled and consults disabled persons about the planning, implementation and evaluation of programmes that are of concern to them. There are in fact many examples that could be given of such work which bear witness to the change in the approach to responsibility, and the results of this have been particularly encouraging, especially in developing countries, where basic needs are still not met and social security is virtually non-existent.

226. It is clear from the information received from Governments that in almost all States disabled persons have the right to associate in organizations, societies and federations. 79/ Many replies specify that disabled persons have the right and means to influence the decision-making process. 80/ On the other hand, in other States, the power to make decisions is kept in the hands of governmental bodies 81/ and some Governments appoint their own representatives in organizations of disabled persons. 82/ On the whole Governments are clearly taking initiatives to encourage the activities of such organizations, especially in consultation and advice, while in some countries the authorities delegate extensive powers to voluntary associations in the application of policies for the disabled. 83/ In addition, the replies highlighted the important role played by trade unions with regard to the rehabilitation and vocational integration of the disabled and their access to equality of opportunity and treatment.

227. It has already been pointed out that, at the international level, the Centre for Social Development and Humanitarian Affairs is the United Nations body responsible for implementing the World Programme of Action and, through the department for the disabled, it maintains close relations with non-governmental organizations throughout the world. The annual inter-agency meetings on the Decade, organized by the United Nations office at Vienna, have been instrumental in establishing an important working link for cooperation between the United Nations system and the main non-governmental organizations concerned. In December 1985 a number of non-governmental organizations with offices in Vienna combined to form an NGO committee on disabled persons for the purpose of enhancing assistance to the United Nations in the implementation of the World Programme of Action.

228. Finally, it must be stressed that it is largely due to the information activities carried out by these bodies, especially those of a transnational nature, such as Disabled Peoples' International, that it has been possible for the issue of disability to be looked at from the human rights point of view. Furthermore, what might seem obvious today was not so less than a decade ago, and to write a report on the violation of the human rights of disabled persons has been a very real achievement by these organizations and is further testimony to their determined struggle. In addition to this acknowledgement, the Special Rapporteur would like to express once more his deepest gratitude for the cooperation he has received from them.

E. Rights of the disabled in the matter of education, training and vocational guidance

1. Education and training

229. In this area, the basic idea of the World Programme of Action is to promote policies which recognize the right of disabled persons to equal educational opportunities. The Programme stipulates in this case that the education of the disabled should as far as possible be carried out within the general education system, pointing out that at least 10 per cent of the disabled population are children who have the right to education, even though this may necessitate special educational services. The Tallinn Guidelines contain recommendations for specific programmes and training materials, the provision of special education teachers as consultants to regular education teachers, the setting up of resource rooms with specialized personnel and materials, the running of special courses in regular schools, etc.

230. It is evident from the replies received that, in regard to education and training, considerable efforts are being made in most countries with three broad aims: to ensure the fullest possible integration of the disabled in ordinary school systems, to train specialized teachers and advisers, and to make sure that the necessary equipment is available to bring disabled persons up to the same level of education as other pupils and thus enable them to become self-sufficient and self-supporting rather than being ensnared in the social security system. The setting up of special education institutions is necessary, for example, when the nature or gravity of the disability (blindness or deafness) prevents the persons concerned from attending normal classes. 84/ The Government of Sweden has pointed out in its reply that qualified technical and teaching staff are available to assist in the education of those with a disability and that special educational conditions are provided for the mentally retarded, just as the deaf are taught by sign language.

231. In Belgium, where schooling is obligatory for 12 years, a juvenile court has the power to exempt disabled children from compulsory education. Courses and university studies are available for the training of special education teachers. Canada points out that current policy is tending towards abandonment of the principle that the disabled should be educated separately. Special services are run by the Ministry of Education in Venezuela, providing education for disabled children from a very early age and job-related training for adolescents and adults. At the national level there are 16 public and private institutions operating at university level, which train teaching and technical staff in individual aspects of special education. In Cyprus, an act has been passed on special education and the Government assumes responsibility for the education of children with slight mental retardation and physical or sensory disabilities between the ages of 5 and 18. The general policy is not to separate such children from the others, although special schools are available where this is not possible. In the Philippines, special education is provided for blind and deaf children and children with orthopaedic disabilities and mental retardation, although in some schools they are integrated in the general education system. Qatar reports that it provides special educational services for children with disabilities, with separate institutions for boys and for girls. If they cannot be educated in Qatar,

they may be sent abroad, the expenses being borne by the State. Lastly, the replies received indicated that African countries have not set up separate special education facilities, but most make provision in specialized residential or day schools for students with visual, hearing or mental disabilities.

232. UNESCO's action in the educational field, as set out in the Medium-Term Plan (1990-1995) is very significant. It addresses the educational needs of children and young persons with disabilities by means of an integrated education approach and community-based programmes. Within this framework, UNESCO's aim is to establish a link with the facilities normally available within the education sector and with operational activities in Member States. During the first biennium, efforts will be concentrated on three main areas:

(a) Planning, organization and management of special education provision;

(b) Teacher-training to meet special needs in the classroom;

(c) Early identification of disability in children, rapid remedial action and education of the parents. In this connection, UNESCO, in addition to drawing up manuals on special education, has published a number of works and is currently preparing a publication on education for disabled children and adolescents and on the use of Braille.

2. Vocational training and rehabilitation

233. At the start of this chapter (paras. 207-213) we referred at some length to the subject of rehabilitation in the broad sense. Accordingly, we can now confine ourselves to summarizing the information received, especially from governmental sources, since non-governmental organizations generally agree that rehabilitation has to be considered as a whole and not subdivided between the various services and agencies responsible for training, on the one hand, and employment and health on the other. It is therefore of interest to know how Governments are incorporating these ideas in their policies and how they are gradually refining the machinery for cooperation between themselves on the one hand and non-governmental organizations and specialized agencies of the United Nations on the other.

234. Training for independent day-to-day living has become a focus in some countries. In others, reintegration and vocational rehabilitation programmes are being implemented as part of non-formal as well as formal education. Many States report on the implementation of community-based rehabilitation programmes. Twofold results can be achieved by this approach, namely expansion of the rehabilitation services and promotion of the integration of disabled persons. In this case, the community has a part to play in the planning, initiation and provision of the service, as has been done, for example, in some regions of Thailand for mentally disabled persons and in India for the blind. Nepal has also recently trained a number of instructors who are actively involved in the implementation of community-based rehabilitation programmes for persons with impaired vision.

235. Some Governments report that they have set up sheltered workshops in rural areas 85/ and emphasize the importance of training persons with a

disability for agricultural tasks or as craftsmen. 86/ The USSR reported positive results from home-training and Sweden highlighted the results achieved by in-service training. Apprenticeships with craftsmen have also been mentioned by various sources as a useful means of reintegration in society. Other forms of preparatory training have been found necessary in the case of persons with a severe or multiple disability and the need for medical assessment and therapy to be carried out in parallel was frequently stressed. Other replies emphasized the importance in local communities of making use of acquired skills, including those of disabled persons, for use in training programmes. Almost all replies stressed the importance of respect and confidence for the training and reintegration of disabled persons, as well as the encouragement of a feeling of self-esteem.

236. In regard to the training of professional and auxiliary staff, the replies indicated the efforts made by Governments to expand training facilities and training programmes for rehabilitation, counselling and skills training, in both community- and institution-based programmes. Pakistan reported an expansion of medical and paramedical facilities to enable them to be used both for training and for the provision of services. In Thailand, for example, rural health workers, parents and those providing care to persons with mental disorders are being given special training. India has also been providing short-term training courses for teachers working in the regular school system, to enable them to educate and train disabled children. To remedy the shortage of trained professional and auxiliary staff in the Congo, bilateral agencies have been conducting courses for community workers. Some countries report a lack of rehabilitation specialists, physiotherapists and specialists in the education of persons with physical disabilities and mental disorders. Nigeria emphasized the training of personnel working in hospitals and rehabilitation centres, while indicating that it is also looking into ways of increasing the number of occupational and speech therapists. There is in general a tendency for the training of disabled persons to be directed toward self-employment activities, which provide more realistic opportunities for the disabled to use their skills and generate income.

237. As already pointed out, ILO as an intergovernmental organization has been very actively engaged in vocational training and guidance. One of the paramount aims of its policy has been to ensure the right to participation of children by means of active vocational rehabilitation programmes. The adoption of ILO standards on vocational rehabilitation has greatly stimulated worldwide action in promoting and developing vocational rehabilitation and employment services for all categories of disabled persons. According to an ILO brochure entitled "Experiences and reflections on a new concept of service provision for disabled people", experience of providing services has shown that it is essential to maintain close contacts with local sources, to give disabled persons adequate information about those services, to provide follow-up at each level of training and to undertake a general evaluation of what has been achieved.

238. In addition to what was said earlier regarding the training activities of UNHCR and those of the Centre for Social Development and Humanitarian Affairs - especially its role in coordinating the policies and programmes of different organizations actively engaged in this field - it is important to

emphasize the work of WHO, which has published a useful manual entitled "Training in the community for people with disabilities" (1989), now available in all the working languages of the United Nations.

239. The African Rehabilitation Institute is also playing a key part in responding to the training needs of disabled people throughout the continent, ensuring the coordination of measures and programmes between the different African countries and chanelling the contributions of the various international donor organizations. Lastly, the International Committee of the Red Cross and the Red Crescent has set up a special fund for the rehabilitation of disabled persons (mainly war victims) and its programmes concentrate on making the fullest use of local resources and on training craftsmen and disabled persons themselves in the production of prostheses and similar devices which are not manufactured in the country.

F. Rights of disabled persons in respect of employment and working conditions

240. The World Programme of Action calls for Member States to adopt policies to ensure that disabled persons have equal opportunities for productive and gainful employment in the open labour market. Measures in support of the integration of the disabled in the labour market include employment quotas with corresponding incentives, reserved or earmarked employment, loans or grants to small businesses and cooperatives, exclusive contracts or priority production rights, tax exemptions, preferential purchasing and other forms of technical or financial aid to firms employing disabled workers.

241. Measures for providing work for disabled persons obviously depend largely on the condition of the individual, although such measures all have two distinct but often complementary aims. They should be directed, on the one hand, at alleviating the inevitable disadvantages and often considerable suffering of disabled persons and at the same time facilitate their integration in the labour market, so as to make them financially independent and productive members of society, capable of paying their taxes and in a position to reduce their demands for services. 87/ Particular emphasis has been placed on the need to give the workforce proper training as an important means of preventing disabilities caused by industrial accidents. This aspect is also a major concern of the ILO, as reflected in its occupational health and safety programme. If adopted and applied, the ILO Vocational Rehabilitation and Employment Convention will guarantee that disabled persons are not subjected to discrimination at work. The following provisions of existing ILO standards may be given by way of examples: (a) the ILO Vocational Rehabilitation and Employment Convention No. 159 (1983) emphasizes that a national policy on the vocational rehabilitation and employment of disabled persons must be based on the principle of equal opportunity and treatment of disabled men and women workers; (b) the ILO Vocational Rehabilitation and Employment Recommendation No. 168 (1983) states that: "Disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment".

242. The Tallinn Guidelines contain the following provisions on the promotion of employment:

- "Disabled persons have the right to be trained for and to work on equal terms in the regular labour force. Community-based rehabilitation programmes should be encouraged to provide better job opportunities in developing countries.

- Employment opportunities can be promoted primarily by measures relating to employment and salary standards that apply to all workers and secondarily by measures offering special support and incentives. In addition to formal employment, opportunities should be broadened to include self-employment, cooperatives and other group income-generating schemes. Where special national employment drives have been launched for youth and unemployed persons, disabled persons should be included. Disabled persons should be actively recruited, and when a disabled candidate and a non-disabled candidate are equally qualified, the disabled candidate should be chosen.

- Employers' and workers' organizations should adopt, in cooperation with organizations of disabled persons, policies that promote the training and employment of disabled and non-disabled persons on an equal basis, including disabled women.

- Policies for affirmative action should be formulated and implemented to increase the employment of disabled women. Governments and non-governmental organizations should support the creation of income-generating projects involving disabled women."

243. According to the information given, many States have developed and introduced programmes to create jobs for persons with disabilities, preferential treatment being accorded to those persons. 88/ The programmes also encourage or require the recruitment of a certain percentage of the labour force from persons with disabilities. Several countries have set minimum quotas of posts for disabled persons and also established special workshops and sections for persons with disabilities. 89/ Financial incentives available to employers are another means of ensuring that preferential treatment is given to disabled persons. Although a number of countries have not provided information on this aspect, 90/ others have mentioned subsidies or tax concessions which are granted to employers who comply with the requirements. 91/ Some countries have also set up an incentives system for persons with disabilities to encourage them to take up gainful employment. In India, the granting of credits on very favourable conditions in order to encourage the launching of small-scale business ventures is an example of such incentives. In other countries, managers are required to notify social welfare services of vacancies suitable for disabled persons. Another two States report that there is an obligation on official services to assist disabled persons in finding work. 92/

244. In some countries, the authorities and the trade unions ensure close cooperation between training centres for the disabled, government services and firms with a view to guaranteeing maximum opportunities for employment of the disabled. In the developing countries, the most effective form of assistance

has been rendered by cooperatives, often incorporating a charitable motive. Self-help cooperatives for disabled persons, for example, are a good way of promoting self-employment. Such bodies have also received the support of large international cooperative movements.

245. Reference has already been made to the important part played by ILO in regard to working conditions and work safety, and in particular to the currently valid standards issued by that Organisation. Non-governmental organizations have also attached great importance to working conditions and in particular to cases of failure to comply with regulations governing health and safety at work. Where a disability has occurred at the worksite, they demand that the person concerned should be reintegrated as soon as the rehabilitation process allows. 93/ If the consequences of the disability prevent the resumption of previous activities, the disabled person should be offered employment suited to his capacities. Temporary wage subsidies should also be provided to compensate for the losses sustained and the distress suffered during a disabled persons period of inactivity. It was stated that all countries should pay priority attention to employment, which is an important part of activities for the development of human resources at the national level. Many countries have received ILO assistance in this connection.

G. Other rights of disabled persons

246. As was stated previously, the physical barriers of architecture and buildings are among the main obstacles to the full integration of disabled persons into social, economic and cultural life. It should be noted, however, that this is one of the areas in which the greatest results have been achieved, at least in the course of the Decade. Available information reveals that significant progress has been made in the steps taken by Governments to facilitate the access of disabled persons to buildings and transport services particularly in the public sector.

247. Some States report that they have adopted measures intended to facilitate full access to buildings, including levelling off pavements, laying paving, marking parking areas, installing automatic doors, widening lifts and installing toilet facilities for wheelchair users. 94/ Others report the adoption of measures to facilitate access to such public places, as stadiums, commercial centres and shops. 95/ As regards the problem of suitable housing, some countries have given priority to improving housing 96/ and to making it easier for disabled persons to move around inside. Steps have also been taken to grant interest-free loans for building and renovating housing. 97/

248. As regards transport services accessible to disabled persons, the steps taken and the regulations brought into force in many States give evidence of considerable improvements. Some Governments also supply free or low cost transport cards in cities and rural districts. 98/ Others provide specially designed motor vehicles (cars with manual controls, etc. 99/) and many facilitate their import if they are not manufactured locally. 100/

249. At the request of the General Assembly, a study was carried out in 1981 by the Centre for Social Development and Humanitarian Affairs, entitled "Access to United Nations buildings, documents and information facilities for persons with sensorial disabilities". The three-part study was compiled by

experts who were themselves disabled persons, and covered the United Nations buildings in New York, Geneva and Vienna. It was observed that in all three cases considerable investments were required to facilitate full and equal access by disabled persons to the facilities and the meetings which took place in them. Recently a number of improvements have been introduced in the United Nations Industrial Development Organization (UNIDO), the Economic and Social Commission for Western Asia (ESCWA), the United Nations Educational Scientific and Cultural Organization (UNESCO), the United Nations Environment Programme (UNEP), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Children's Fund (UNICEF).

250. The World Programme of Action emphasizes the great important of leisure, sports and other recreational activities for disabled persons. It also lays down that States have an obligation to ensure that disabled persons have an opportunity to use their creative, artistic and intellectual capacities to the maximum, not only for their own benefit, but also for the enrichment of the community. Examples of this are the grants awarded in the United Kingdom and Northern Ireland by the Arts Council to a number of theatre companies, particularly the British Theatre of the Deaf, Graece and Strathcona. The Arts Council has also prepared a deontological code which includes the employment of disabled persons. The Carnegie Trust has sponsored the production of "Arts for Everyone", which is a practical guide to the arts for persons suffering from any form of disability. China has set up the Disabled Artists' Company.

251. The available information reveals considerable efforts by Governments and local communities to facilitate access by disabled persons to museums, art galleries, libraries, etc. A number of States earmark funds for the publication of journals and books in Braille and for recording cassettes. 101/ In recreational activities, the Office of Tourism of the Canadian Government has sponsored research projects to identify hotels or tourist accommodation accessible to travellers with sight or hearing disabilities and particularly motor disabilities. The Canadian parks have introduced programmes to create itineraries for such persons.

252. The World Programme of Action rightly stresses the paramount importance of sport for disabled persons, since sports activities are one of the most efficient means of enabling such persons to fulfil themselves physically and mentally. Such activities also have a positive effect in that they assist the development of the personality and facilitate family and professional integration while encouraging social contacts. Another very important aspect of sport is as a means of treatment and therapy. Rehabilitation through sport is in the case of disabled persons a doubly beneficial resource.

253. Many government replies describe the various measures adopted for developing sport and permitting disabled persons to have access to it. To illustrate this, we consider it important to mention the case of Paraguay, the Government of which has made provision for the building of sports complexes in various parts of the country, which in addition to their social function, carry out a very important role *vis-à-vis* disabled persons; first of all, they are accessible; secondly, they provide sports activities for disabled persons, thirdly, they serve as centres for meeting, contact and social integration; and, fourthly, they also perform rehabilitation. 102/ It may be noted that Paraguay is one of the developing countries which has earmarked most funds for

this type of activity, and has provided that all income from games and lotteries will be devoted to this purpose. This seems to us an example worthy of imitation.

254. Another noteworthy example can be found in the activities of the International Boy Scout Movement for the integration of disabled children. Its programme on scouting with the disabled has been shown to be an extremely efficient means of bringing together children with disabilities and children without. The importance of practices of this nature for stimulating and developing feelings of solidarity while at the same time eliminating prejudices and other cultural barriers which generally have their roots in childhood, will be evident to all.

H. Measures to guarantee the exercise of the rights of disabled persons and the effectiveness of the remedies available to them

255. This is certainly one of the favourite subjects of the non-governmental organizations, while its incomparable importance and topicality make it one of the key points of this report. In order to deal with it appropriately, its various components need to be clearly delimited, namely: (a) the problem of punishing acts of discrimination against disabled persons; (b) the recognition of their specific rights and the effectiveness of legal remedies for their defence; (c) the problems of statutory guardianship in the event of the institutionalization of persons suffering from mental disorders; and (d) the issue of the international monitoring or supervision of due respect for the human rights and fundamental freedoms of disabled persons.

256. The legal treatment of acts of discrimination against disabled persons is undergoing a process of complete transformation. Summarizing the contents of paragraphs 200-203 of this report, we might say that domestic legislation initially only prohibited discrimination in specific areas of social life, for example, education laws prohibited it in education; labour conventions prohibited it in labour, and so on successively covering the whole field of the professions, social security, etc. Only recently, particularly in the last few decades, have Governments begun to promulgate anti-discrimination laws of a general nature. Disabled persons have, however, always encountered enormous difficulties in persuading Governments and courts to apply these general laws to their particular case. The present trend, which consists in the adoption of specific laws which not only prohibit all types of discrimination but also penalize discriminatory acts, is extremely encouraging.

257. The legal protection of the specific rights of disabled persons gives rise to a series of problems relating to the dissimilarity of treatment accorded to them in the various domestic legal systems. Generally speaking, it is only in exceptional instances that substantive law recognizes their existence (civil codes, procedural codes, etc.) and, where this is done, the regulations are usually vague or inadequate, which contributes to the fact that courts and administrative tribunals are reluctant to recognize disabled persons as an "identifiable class" liable to be the particular victims of violations. 103/ On other occasions courts have considered that the legal interest is too imprecise and have given priority to economic interests. An example of this is the case of Blair and Ors. v. Venture Stores Retailers Pty. Ltd., a 1984 decision of the Equal Opportunity Board, Victoria, Australia. As

may be recalled, in May 1983 Venture Stores took over the premises and closed off a lift which formerly gave customers access to the first-floor sales area. Three women who used wheelchairs took the store to court on the grounds that they had been discriminated against under article 27 H (2) of the Equal Opportunity Act 1977. The Board stated that the closing off of access to the lift had nothing to do with the issue of access to the first floor by persons in wheelchairs, since the decision had been taken for motives of profitability, and the provision of the services required would have been excessive and onerous for Venture Stores. 104/

258. This why it is very important to reiterate yet again that the recognition of the specific rights of disabled persons is not a matter which is concluded by merely listing those rights which are clearly embodied in the various legal instruments or recognized by case-law in the courts, the basic elements of which have been set out in this chapter. From a legal point of view the problem is somewhat more complex, in that the specific rights of disabled persons exactly parallel their needs, the satisfaction of which is an indispensable condition for their enjoyment of human rights, on an equal basis with the rest of society. In short, the "needs" of disabled persons and their "specific rights" are simply two sides of the same coin. 105/

259. The installation of ramps for disabled persons in public buildings, schools, polling stations, etc., can in no sense be construed as the recognition of special privileges on their behalf, but merely as compliance by Governments with their legal obligation to guarantee education for all and the exercise of political rights, also for everyone, on an equal basis. In other words, we are faced with requirements which in themselves are rights, but which at the same time are means of implementing other rights. We have already said that in a criminal trial in which the accused is a deaf mute, the absence of an interpreter would not only mean the negation of a specific right and the transgression of a procedural norm, but purely and simply the deprivation of the right of defence.

260. The definition of these specific rights of disabled persons as their actual needs, the satisfaction of which is an essential condition for them to be able to enjoy human rights on an equal basis with others, not only engenders obligations for Governments, as we have just seen, but also obligations for society. In the specific case of forced institutionalization, we said that, over and above the interests of the individual, society must do whatever it can to avoid that institutionalization. This entails, *inter alia*, the primary obligation of the community to adapt to the elementary needs of disabled persons. Apart from this, there is also the specific issue of abuse in institutionalization and during institutionalization in special establishments. This requires the domestic legislation of States to make clear provision for effective remedies capable of preventing or terminating an arbitrary or unnecessary institutionalization. Moreover, the non-governmental organizations which are most active in this area propose that the right of disabled persons to receive care, even in special institutions, also includes the right to oppose institutionalization.

261. The Special Rapporteur wishes to point out that in view of the sensitive and complex nature of the problem of institutionalization, it will always be useful for the decisions of administrative bodies to be reviewed and assessed by a legal authority. With regard to habeas corpus, he considers that universal experience is sufficiently instructive for its adoption to be advisable in countries - the majority - which have not yet included it in their domestic legislation. Lastly, he would point out that this should be the proper remedy not only when a legal authority considers whether a case of institutionalization is arbitrary, but also when ending it as it has ceased to be necessary, or when the conditions of the institutionalization have deteriorated or been aggravated or when there is evidence of ill-treatment. The last-mentioned, indeed, is a decisive factor in checking and cutting down the abuses which still frequently occur.

262. The international protection of the rights of disabled persons is one of today's most topical issues, since the United Nations Decade of Disabled Persons will very soon come to an end and so far no provision has been made for any monitoring mechanism of this type. The discussions in the Economic and Social Council on drafting an international convention on the subject led to the conclusion that the immediate future was not the moment for undertaking this activity, for reasons of circumstance rather than substance. In any case the lack of a specific convention like those adopted for other vulnerable groups - women, refugees, immigrants, etc. - does not mean that there are no international standards to protect disabled persons. Throughout chapter I we had occasion to refer in detail to the extensive, although admittedly scattered, range of international standards in existence. However, the problem which still remains is the lack of an international monitoring body to supervise in particular compliance with the various regulations for the protection of the human rights of disabled persons. The proposal of an appropriate monitoring mechanism perhaps constitutes the most delicate aspect of the mandate entrusted to the Special Rapporteur, and it is this which has aroused the greatest expectations among the non-governmental organizations.

263. As will be seen, in the final part of this report the Special Rapporteur sums up the many consultations which he has conducted and puts forward the following alternatives: (a) the establishment of an international ombudsman for disabled persons - this solution is the one which seems to find most favour with the non-governmental organizations; and (b) entrusting the Committee on Economic, Social and Cultural Rights with the task of supervision, once the Economic and Social Council has broadened the terms of its mandate. The preferred solution of the Special Rapporteur, as will be seen in the final paragraphs of this report, is the latter, or (c) a combination of the two alternatives.

V. PUBLIC INFORMATION AND EDUCATION

264. It would be wrong to think that the problem of discrimination and prejudices frequently directed against disabled persons amounts to a strictly legal issue or one that can be resolved through appropriate legislation. This is obviously only one aspect of a much more complex question, resulting from sociological and cultural factors that have a decisive effect on the behaviour of individuals and society towards such persons. Thus it is crucial to undertake and develop activities for the entire community, aimed at a genuine raising of awareness that will produce profound changes in attitude.

265. This is the basic thought behind the World Programme of Action, when it urges Member States to "encourage a comprehensive public information programme about the rights, contributions and unmet needs of disabled persons that would reach all concerned, including the general public. In this connection, attitude change should be given special importance".

266. In other words, the following should be the content and target population of the information to be disseminated:

(a) Adequate information on the means and services available for persons with disabilities and on their specific rights, in order for them to make full use of them. Persons concerned should be understood as including the family, for example;

(b) The information for the general public should stress human needs, especially those that are as yet unmet, the specific rights that disabled persons should be recognized as having and the need to respect them;

(c) For both sections of the target population, i.e. the general public and the disabled persons themselves, the information should stress the objective contribution of disabled persons to the community and the benefits, both spiritual and material, that the integration and full participation of disabled persons in social life will bring the community.

267. According to the information available to the Special Rapporteur, the activities conducted during the Decade in this sphere have helped achieve some changes in attitude in the general public, although the results cannot be termed fully satisfactory. The examples of public information programmes and campaigns undertaken by various Governments are extremely varied and in some cases extremely ingenious, especially when they have been conducted jointly with the organizations concerned, thus changing this modality into a genuine reference model.

268. Following the example of the Centre for Social Development and Humanitarian Affairs, which has set up an international data bank with information on disabled persons, some States have established national banks. Similarly, the United Nations Department of Public Information is continuing to publicize the objectives of the Decade and the World Programme of Action through the distribution of information materials. The World Programme of Action itself has also been translated into all the official United Nations languages and distributed in over 60 countries.

269. In the publications category, mention should be made of those circulated by the organizations themselves, such as Vox Nostra, published by the Disabled Peoples' International. It contains the texts of international instruments, an account of the work of international human rights bodies, etc. The Swiss Fondation pour l'Intégration Professionnelle des Personnes Handicapées also publishes a bulletin whose purpose is to facilitate access to jobs by disabled persons seeking employment.

270. Finally, from the information received the Special Rapporteur has observed that the information campaigns undertaken by Governments are aimed primarily at highlighting the needs of persons with disabilities, which is correct but insufficient. Greater emphasis should be placed on their rights and on their contribution to society. The Special Rapporteur believes that the time has come for becoming truly aware, not only of what disabled persons might contribute if major obstacles are not placed in their path, but also of all that they are in fact bringing to the world of labour, science, arts and especially, what they bring us every day, in that intimate area of our spiritual life, which persisting prejudices cannot prevent us from calling love.

RECOMMENDATIONS AND PROPOSALS

271. As we have seen, the Special Rapporteur has adopted the method of making at the end of each chapter, and even when concluding an important topic, a brief summary of the most appropriate measures in each case. For this reason the Special Rapporteur will not formulate general conclusions but will simply outline the most important recommendations which, as stated earlier, have been discussed throughout the various chapters. Rather, in these last few pages the Special Rapporteur will focus his attention on two or three specific proposals.

A. General recommendations

272. Internal legislation should be adapted to international norms and guidelines concerning the treatment of disabled persons. It should be periodically reviewed and constantly improved, for the standard of national legislation is far below the requirements of proper treatment of disabled persons.

273. Without prejudice to the specific proposal below, it is very important for existing international monitoring bodies, such as the Human Rights Committee and the Inter-American Commission on Human Rights in the regional sphere to supervise the specific implementation of the International Covenant on Civil and Political Rights and the American Convention as they relate to persons with disabilities. This recommendation is doubly valid with respect to the monitoring bodies that supervise the implementation of certain international instruments intended to protect various particularly vulnerable groups or sectors, such as the Committee on Discrimination against Women and the forthcoming Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. This is because of the frequent occurrence of double or triple discrimination. 106/

274. After the Decade has ended, the question of human rights and disability should be kept on the agendas of the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Sub-Commission as an item of constant concern and ongoing attention.

275. Support and encouragement for the activities of the Centre for Social Development and Humanitarian Affairs in Vienna should be reflected in larger financial contributions and better integration of its arduous work with the rest of the United Nations bodies.

276. It is recommended that cooperation and advisory assistance programmes should be stepped up between the various United Nations bodies and Governments, and even national entities working in the field of disability. In this connection, the work being conducted by the Centre in Vienna is very positive, and the Centre for Human Rights in Geneva could also do some useful work under its advisory assistance programmes. The activities in this area of other specialized organizations such as ILO, WHO, UNICEF, FAO, etc. should also be stepped up.

277. The guidelines contained in the World Programme of Action should be put into effect, in particular by strengthening or establishing national committees for the coordination and implementation of the Programme.

278. The establishment of non-governmental organizations formed by disabled persons or defending their interests should be encouraged and their activities facilitated. This recommendation is crucial, since, as we said earlier, the leading role played by those organizations in decision-making, policy selection and defence of their own human rights is one of the most outstanding features of the Decade. The recognition of disabled persons as experts in their own affairs is relatively recent and coincides, not by accident, with the growing attention being paid to the topic by the international community. Needless to say, without the rigorous participation of organizations led by disabled persons, the link between disability and human rights would not have been stressed sufficiently to justify the appointment of a Special Rapporteur, who, in turn, has only been able to fulfil his mandate thanks to the contribution and cooperation he received from those organizations and the outstanding experts he met there.

B. Specific proposals

279. As was said earlier, the establishment of an international body or mechanism to supervise respect for the human rights of disabled persons is one of the most cherished aims of the non-governmental organizations. The fact that the United Nations Decade of Disabled Persons is due to end shortly makes this a most topical and urgent question.

280. Despite the many actions undertaken throughout the Decade and the valuable results that have been achieved for disabled persons in many respects, it must be said that at the end of this period, persons with disabilities are going to find themselves at a legal disadvantage in relation to other vulnerable groups such as refugees, women, migrant workers, etc. The latter have the protection of a single body of binding norms, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, etc. In addition, those conventions have established specific protection mechanisms: the Committee on the Elimination of Discrimination Against Women and the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families are in charge of supervising compliance with the conventions.

281. It is a well-known fact that nothing of the sort has yet occurred with regard to disabled persons and that the discussions at the forty-second session of the General Assembly, in October 1987, concerning the elaboration of a convention on the human rights of disabled persons concluded with the postponement of that initiative. 107/ The current situation may be summarized as follows:

(a) The Centre for Social Development and Humanitarian Affairs coordinates and supervises the implementation of the World Plan on the basis of the information provided in particular by Governments. The publications issued by the Centre on the basis of that information are extremely useful in indicating how the plan is developing and the progress being achieved in the various countries and fields (culture, employment, education, etc.);

(b) However, there is no specific body in charge of monitoring respect for the human rights of disabled persons and acting, whether confidentially or publicly, when particular violations occur. It can be said that persons with disabilities are equally as protected as others by general norms, international covenants, regional conventions, etc. But although this is true, it is also true that unlike the other vulnerable groups, they do not have an international control body to provide them with particular and specific protection. Thus the most active non-governmental organizations are emphasizing the need to establish a flexible mechanism that will adapt to the particular features of the problem that concerns them, such as an international ombudsman.

282. Regarding the ombudsman's competence, mandate and sphere of action, there are a series of variants and possibilities that require thorough discussion, not only in the human rights bodies, but also with the Centre for Social Development and Humanitarian Affairs in Vienna. For that reason the Special Rapporteur will simply convey the general outline of this initiative, which should be discussed on a relatively urgent basis, with a view either to implementing it or to seeking alternatives.

283. The non-governmental organizations point out that the ombudsman has the main advantage of being able to act, that is to establish a dialogue, possibly confidential, with the Governments of countries where sensitive human rights situations exist; he would be able to perform some very productive preventive work through promotion activities and step up cooperation and advisory assistance activities. In particular, the ombudsman would have the assistance of experts on disability and would maintain close links with the non-governmental organizations and other sectors concerned.

284. The Special Rapporteur, for his part, feels that another possible alternative would be to entrust the supervisory task to the Committee on Economic, Social and Cultural Rights, which would receive a special mandate for that purpose. This proposal is based on the following considerations:

(a) It would meet the repeated recommendations being made in most organizations of the United Nations system not to increase the number of supervisory bodies but rather to entrust existing ones with new activities;

(b) The Committee on Economic, Social and Cultural Rights was not set up under the International Covenant on Economic, Social and Cultural Rights but was established by the Economic and Social Council for the purpose of supervising implementation of the Covenant. It is therefore within the competence of the higher body to assign the Committee new powers, which may include supervisory powers of universal scope, that is, not limited to one particular treaty;

(c) In addition, developments in the field of international control have been so rich and dynamic as to have led to some surprising innovations, such as entrusting the supervision of two instruments to a single body. An example is the Inter-American Convention on Human Rights, which monitors compliance with the American Convention and the American Declaration, for those that have not ratified the Convention, and both instruments for those that have done so;

(d) In this event, the Committee could hold, in addition to the session it currently holds, a special session to deal with reports submitted by States and communications submitted by the non-governmental organizations, which can already present written communications to the Committee. Extending the functions of the Committee to the area of disability would be highly innovative and would achieve an adequate framework of protection and stimulate cooperation between Governments and concerned organizations in the national and international context;

(e) The normative framework of action would have to be specified, but, in addition to existing general and specific norms on the protection of disabled persons, other very valuable instruments are currently being drafted, such as the standard rules on the equalization of opportunities and the body of principles for the protection of persons with mental illness. In this connection, the relevance of incorporating this function is made clear by the lack of a reply to the question: If not the Committee on Economic, Social and Cultural Rights, what other United Nations body would be responsible for implementation and monitoring compliance?

(f) Finally, the Special Rapporteur has consulted non-governmental organizations and also the members of the Committee on Economic, Social and Cultural Rights itself, at a public meeting to which he was invited, and noted that this proposal has the prima facie agreement of the sectors concerned, at least as a sound basis for discussion, to be elaborated upon by the contributions of, first, the experts of the Sub-Commission, and then the members of the Commission on Human Rights and the Economic and Social Council.

Notes

1/ Source: World Health Organization (WHO).

2/ Human Rights - A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1).

3/ See resolutions 31/123 and 34/154.

4/ World Programme of Action concerning Disabled Persons, published by the Division of Economic and Social Information and the Centre for Social Development and Humanitarian Affairs (November 1983, DESI, S97).

5/ E/CN.4/Sub.2/1985/SR.23, para. 69; see also the background paper by the Branch for Equality of Men and Women for the fifth inter-agency meeting held in Vienna in February in 1987.

6/ E/CN.4/Sub.2/1985/SR.23, para. 63.

7/ Ibid., paras. 63 and 72.

8/ See E/CN.4/Sub.2/1985/SR.23, paras. 31, 37 and 40. See also note 50/.

9/ See Official Journal No. L225/443 of 12 August 1986.

10/ For the texts of the Conventions, see United Nations, Treaty Series, vol. 75, Nos. 970-973. For the texts of the Protocols, see International Committee of the Red Cross, Protocols additional to the Geneva Conventions of 12 August 1949, Geneva, 1977.

11/ League of Nations, Treaty Series, vol. XCIV, No. 2138, p. 65.

12/ See also resolution 32/2 of 24 April 1991 of the Commission for Social Development in document E/1991/26-E/CN.5/1991/9.

13/ E/CN.4/Sub.2/1985/32, paras. 8 and 9.

14/ 9 November 1990.

15/ Disability prevention and rehabilitation. Report of the WHO Expert Committee on Disability Prevention and Rehabilitation. (World Health Organization, Technical Report Series No. 668, 1981) and ICIP/RHB/920, pp. 1-11.

16/ Ibid.

17/ Mary Chamie, "The status and use of the international classification of impairments, disabilities and handicaps (ICIDH)", World Health Statistics Quarterly, 43 (1990), p. 273.

18/ Ibid.

19/ See Summary document No. 1, Concepts of Disability, prepared by WHO, fifth inter-agency meeting (Vienna, February 1987) and documents E/CN.5/1987/7 and A/41/605 and Corr. 1.

20/ See Official Records of the Economic and Social Council, 1987, Supplement No. 7, paras. 92-101, and draft resolution IX, and CSDHA/DDP/GME/7.

21/ Belgium, Bulgaria, Canada, Chile, Cyprus, Czech and Slovak Federal Republic, Finland, Netherlands, Paraguay.

22/ Bangladesh, Belgium.

23/ Ethiopia, USSR.

24/ China, Cyprus, Finland, Netherlands and Rehabilitation Hope Fund Inc.

25/ Chad, Jordan, Kenya, Singapore, Uruguay.

26/ Norway.

27/ Czech and Slovak Federal Republic, Finland, Romania.

28/ China, Morocco.

29/ Bangladesh, Trinidad and Tobago.

30/ Norway, Trinidad and Tobago.

31/ China, Ethiopia, Finland, Jordan, Mauritius, Norway, Poland, Singapore.

32/ Czech and Slovak Federal Republic, Jordan, Kenya.

33/ E/CN.4/Sub.2/1988/SR.11, para. 29, and SR.12, para. 9.

34/ See ST/ESA/STAT/SER.Y/4.

35/ For a discussion of this matter see Development of Statistics of Disabled Persons: Case Studies (United Nations publication, Sales No. E.86.XVII.17).

36/ "OMS", La Voz, Vol. 1, No. 2 (Montevideo, June 1987).

37/ Referred to in Disabled Persons, Victims of Armed Conflicts and Civil Unrest. Eighth inter-agency meeting on the United Nations Decade of Disabled Persons, 1983-1992, Vienna, 5-7 December 1990, agenda item 4, paper No. 1 (The Case of Refugees). Prepared by the United Nations High Commissioner for Refugees, Geneva, 1990, p. 1 (English only).

38/ E/CN.4/Sub.2/1988/SR.11, para. 16.

39/ E/CN.4/Sub.2/1985/SR.23, paras. 11, 32 and 46, and E/CN.4/Sub.2/1988/SR.11, paras. 42 and 61.

40/ AWEPAA: Conference Report on Child Survival on the Frontline, Harare, Zimbabwe, 21-25 April 1990. See also note 37/ above.

41/ According to a WHO report, more than three quarters of the victims of organized violence are women and children. See also note 37/ above.

42/ See docs. S/21363 and A/45/84, paras. 160-170, A/45/576, paras. 54-186, and A/45/726, paras 15 and 16, and also Disabled Persons, Victims of Armed Conflicts and Civil Unrest. Eighth inter-agency meeting on the United Nations Decade of Disabled Persons, agenda item 4, paper No. 3, prepared by UNWRA. Op. cit., p. 143 (English only).

43/ Children and Armed Conflict. Additional reading materials from Part Six: Children in Especially Difficult Circumstances. A UNICEF Sourcebook on Children and Development in the 1990s. Published on the occasion of the World Summit for Children, 29-30 September 1990, at the United Nations, New York, p. 12.

44/ Ibid. p. 11.

45/ Relief and Rehabilitation of Traumatized Children in War Situations. Eighth inter-agency meeting on the United Nations Decade of Disabled Persons, 1983-1992, Vienna, 5-7 December 1990, agenda item 4, paper No. 2. See note 37/ above (English only).

46/ For more substantial information see: Child Labour: A Threat to Health and Development. Second (revised) addition, published by Defence for Children International, Geneva, Switzerland, 1985; and the report by Mr. Vitit Muntarbhorn, Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/1991/51).

47/ Activities on Women and Disability: Division for the Advancement of Women/Centre for Social Development and Humanitarian Affairs. Sixth inter-agency meeting on the United Nations Decade of Disabled Persons, 1983-1992, Vienna, 5-7 December 1988, agenda item 1, Background paper No. 9, pp. 1-2.

48/ B. Whitaker, "Revised and updated report on the question of the prevention and punishment of the crime of genocide", United Nations doc. E/CN.4/Sub.2/1985/6 and Corr. 1, paras. 40-41.

49/ J.A. Kruse, "The Inupiat and development: How do they mix?", United States Arctic Interests, W.E. Westermeyer and K.M. Shusterich, eds. (New York, Springer Verlag, 1984), pp. 134-157.

50/ E/CN.4/Sub.2/1985/SR.23, paras. 31, 40 and 41; E/CN.4/Sub.2/1988/SR.11, paras. 17, 22, 24, 30, 42; E/CN.4/Sub.2/1988/SR.12, paras. 7, 19, 20, 26, 34, 55, 57.

51/ See E/CN.4/Sub.2/1988/SR.12, para. 42.

52/ Ibid., para. 26.

53/ E/CN.4/Sub.2/1985/NGO/10; E/CN.4/Sub.2/1985/SR.23, paras. 39, 47.

54/ E/CN.4/Sub.2/1988/SR.12, para. 28.

55/ See E/CN.4/1986/42.

56/ E/CN.4/Sub.2/1985/32, paras. 18, 27-29.

57/ See, for example, doc. E/2087 and Economic and Social Council resolutions 305 (XI) and 386 (XIII).

58/ Human Organ Transplantation (World Health Organization, ED87/12, 19 November 1990), p. 4.

59/ See the end of para. 96.

60/ Bengt Lindquist, "Handicapped rights", Report of the International Expert Meeting on Legislation for Equalization of Opportunities for People with Disabilities, 2-6 June 1986, Vienna, p. 69.

61/ Canada, Chad, China, Ethiopia, Germany, Ghana, Jamaica.

62/ Rehabilitation International, No. 3, 1985.

63/ E/CN.4/Sub.2/1983/17/Rev.1.

64/ See the Canadian Immigration Act, art. 19.2, clause 2 (2).

65/ E/CN.4/Sub.2/1983/17/Rev.1, paras. 145-147.

66/ See, for example, Manual on equalization of opportunity for disabled persons (ST/ESA/177). The Centre for Social Development and Humanitarian Affairs has an occasional publication Disabled Persons Bulletin. Doc. ST/ESA/176, Study on disability: situation, strategies and policies, was published in 1986.

67/ Rehabilitation in the Community: the Basis for a National Delivery System for Rehabilitation and Related Materials. Sixth inter-agency meeting on the United Nations Decade of Disabled Persons, Vienna, 5-7 December 1986, agenda item 13, Summary paper No. 2, prepared by WHO (English only).

68/ Vocational Rehabilitation of Disabled Persons: Current Programme and Future Plans (progress report as of July 1989). Seventh inter-agency meeting on the United Nations Decade of Disabled Persons, Vienna, 6-8 December 1989, agenda item 1, Summary paper No. 7, prepared by ILO (English only).

69/ Ibid. Progress report No. 14, prepared by FAO, p. 2.

70/ See General Assembly resolution 44/70 of 8 December 1989.

71/ See ACC/1988/PG/15, pp. 6, 7.

72/ E/CN.4/1991/39.

73/ Ibid.

74/ Denmark.

75/ Bulgaria, Canada, China, Cuba, Czech and Slovak Federal Republic, Ghana, Kenya, Norway, Turkey, Ukrainian Soviet Socialist Republic, USSR.

76/ See the Mental Health Act of Alberta, art. 37, para. 4, and art. 24, paras. 1, 2, 3.

77/ Statement by Disabled Peoples' International. See E/CN.4/Sub.2/1984/SR.24.

78/ See ACC/1988/PG/15, para. 19.

79/ Canada, Cuba, China, Dominican Republic, Ghana, Mali, Norway, Philippines, Senegal, Sweden, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, USSR.

80/ Bahrain, Canada, Finland, Norway. Senegal, Sweden, USSR.

81/ Canada, Cuba, Ghana, Philippines, Saudi Arabia.

82/ Philippines, Trinidad and Tobago.

83/ Singapore, United Kingdom.

84/ Bahrain, Bangladesh, China, Finland, India, Nepal, Pakistan, Swaziland, Thailand, Ukrainian Soviet Socialist Republic, USSR.

85/ Canada, China, Jamaica, Ukrainian Soviet Socialist Republic, USSR.

86/ Jamaica, Poland.

87/ United Nations Development Programme.

88/ Bahrain, Belgium, Canada, Ghana, India, Jamaica, Japan, Mexico, Philippines, Poland, Switzerland, Ukrainian Soviet Socialist Republic, USSR.

89/ Germany, Ghana, Jamaica, Japan, Ukrainian Soviet Socialist Republic, USSR.

90/ Germany, Uruguay.

91/ Australia, China, Finland, Malta, Pakistan, Philippines, Sweden, USSR.

92/ Australia, Jordan.

93/ Rehabilitation International.

94/ Canada, China, Ecuador, Germany, Greece, Jamaica, Malta, Norway, Portugal, Sweden.

95/ China, Ecuador, Germany, New Zealand.

96/ Ukrainian Soviet Socialist Republic, USSR.

97/ Bahrain, Ukrainian Soviet Socialist Republic, USSR.

98/ China, Germany, Greece, Sweden, Ukrainian Soviet Socialist Republic, USSR.

99/ Bulgaria, Ukrainian Soviet Socialist Republic, USSR.

100/ Argentina.

101/ Canada, China, Finland, Sweden, United Kingdom.

102/ Work programmes of the Paraguayan Directorate of Public Welfare and Social Assistance (DIBEN), which is doing important work on disability prevention, rehabilitation of the disabled and equalization of opportunities.

103/ E/CN.4/Sub.2/1985/SR.23, para. 43.

104/ See Quentin E. Angus. "Is there a need for special 'Disabled Legislation'?", Report of the International Expert Meeting on Legislation for Equalization of Opportunities for People with Disabilities, Vienna, 2-6 June 1986, pp. 70, 71.

105/ The idea of need as a source of law is relatively new and has gradually been supplementing and in some areas replacing the idea of interest. (It will be recalled that Iering recently defined a right as "a legally protected interest".) Nevertheless, the concept of need, in its social content, is currently gaining ground and it is undoubtedly the case that human rights have been a decisive factor in this gradual change of direction.

106/ In a letter to the Special Rapporteur, the International Movement ATD Fourth World gives an encapsulated account of the dramatic nature of this phenomenon by describing the situation of a woman, a single parent with two very young children, who is an immigrant and who, apart from existing under conditions of extreme poverty, suffers from multiple disabilities.

107/ ST/ESA/177.

Annex

1. The Special Rapporteur received replies from the following member States: Argentina, Australia, Bahrain, Bangladesh, Barbados, Belgium, Brunei Darussalam, Bulgaria, Canada, Chile, China, Congo, Cuba, Cyprus, Czech and Slovak Federal Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, Gabon, Germany, Ghana, Greece, Haiti, Iceland, India, Israel, Jamaica, Jordan, Kenya, Luxembourg, Mali, Malta, Mexico, Netherlands, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Spain, Sri Lanka, Singapore, Sweden, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, United Kingdom, USSR, Venezuela, Yugoslavia and Zambia.

2. Reports were also received from the following United Nations bodies and specialized agencies: United Nations Centre for Social Development and Humanitarian Affairs; United Nations Economic and Social Commission for Asia and the Pacific; United Nations Economic Commission for Latin America and the Caribbean; Division for the Advancement of Women; Department of Public Information; Office of the United Nations Disaster Relief Coordinator; Office of the United Nations High Commissioner for Refugees; United Nations Centre for Human Settlements; United Nations Development Programme; United Nations Children's Fund; United Nations Relief and Works Agency for Palestine Refugees in the Near East; International Labour Organisation; United Nations Educational, Scientific and Cultural Organization; World Health Organization; and International Fund for Agricultural Development.

3. Reports were also received from the following organizations representing the disabled and from other non-governmental organizations: Disabled Peoples' International (DPI); International Council on Disability; International League of Societies for Persons with Mental Handicap; International Committee of the Red Cross; World Federation for Mental Health; International Movement ATD Fourth World; World Veterans Federation; Four Directions Council; organizations in Italy, Pakistan, Portugal and Sri Lanka; Council of Europe; Lutheran World Federation; Rehabilitation International; World Federation for Mental Health and World Health Federation.
